PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2003

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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CONTENTS

MARCH 30, 2004

OPENING STATEMENT

WITNESSES

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2003

TUESDAY, MARCH 30, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:27 p.m., in Room 2141, Rayburn House Office Building, Hon. Howard Coble (Chair of the Subcommittee) presiding.

Mr. COBLE. Ladies and gentlemen, I apologize for the delay, but as I said to you previously, when we have bills from this Committee on the floor, we suspend the hearing time. The debate has been completed, I'm told, so now we can commence with our hearing.

Today the Subcommittee on Crime, Terrorism, and Homeland Security is holding a hearing on S. 1743, the "Private Security Officer Employment Authorization Act of 2003," and the need for background checks in general.

More and more, private security officers are utilized to protect our nation's assets, both in the Government and in the private sector. These assets are as diverse as the protection of the neighborhood shopping center to the protection of nuclear power plants. These officers act as the eyes and ears of both private corporations and the law enforcement community. The problem is, as USA Today reported in January of 2003, most of the nation's 1 million plus guards are unlicensed, untrained, and not subject to background checks. Their burgeoning $12 billion industry is marked by high turnover, low pay, few benefits, and scant oversight. And according to Government officials and industry experts, little has changed since September 11, 2001.

S. 1743 addresses the unique need of the security officer industry for criminal history background checks on employees and prospective employees. Without such checks, those entrusted to protect our citizens and critical infrastructure could be the very people the security guards are hired to protect against—that is, terrorists and criminals.

As we continue waging the war against terrorism, other industries may also realize a need for criminal background checks but we must also examine the need for criminal history background checks, that may involve nonterrorism concerns, such as child care workers, for example. The Committee believes that certain types of employment should require additional screening of employees and

applicants, but I have to wonder if the way that we have been addressing this issue, one bill at a time, is the most effective or most efficient.

The bill we will hear about today can trace its history to 1991. There are at least two dozen different laws with different definitions and different process structures directing the Attorney General and the FBI to conduct criminal history background checks. Since the September 11, 2001 attacks, the number of checks conducted by the FBI's integrated automated fingerprint identification system has grown from an average of 41,400 per day to 48,215 per day. Other queries of the FBI databases for immigration, law enforcement, and other purposes have also shown significant increases.

We're looking forward to hearing from our distinguished panel of witnesses today, and I am now pleased to recognize the distinguished gentleman from Virginia, the Ranking Member of the Subcommittee, Mr. Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I'm pleased to join you in convening the hearing on S. 1743, the "Private Security Officer Employment Authorization Act of 2003." The private security workers play a vital role in not only securing our businesses and personal properties from theft and vandalism but also protecting critical infrastructure, both public and private, from threat of terrorism. Because of the nature of a security position and the importance of the work, it is necessary that employers have background information on applicants, such as their criminal record history, to ensure that they are trustworthy.

The private security industry is a growing industry, particularly since the 9/11 tragedies, and is important to our economy. At a time when many of the traditional manufacturing jobs, which have been the foundation of our economy and the livelihood of so many families, we must ensure that we have sufficient workforce both in the quantity and the quality of people available for jobs.

Criminal records checks can assist in weeding out untrustworthy persons but must not serve to block worthy people due to unsubstantial or unreliable information. Raw criminal record history information viewed by untrained eyes could do more harm than good in this regard and unfairly deprive an employee or applicant of a good work opportunity and the employer of a good worker, as well.

So an important balance must be struck to ensure employers get relevant information on which to assess qualifications for important and sometimes sensitive work while avoiding confusing or unfairly prejudicial information. The Private Security Officer Employment Authorization Act goes a long way toward meeting that balance by limiting the access to felonies and crimes involving dishonesty within the last 10 years. While some issue has been raised about the advisability of unresolved arrest data, perhaps a balance can be struck there, as well. While we would not expect a bank to hire an applicant with an unresolved bank robbery arrest in the last year, we would not want bogus, insubstantial charges which are not prosecuted to deny employment, either.

So Mr. Chairman, I think it's a good bill that may be improved with some relatively minor tweaking, with eventually becoming

part of a more uniform system of criminal background checks that we may ask the Attorney General to develop.

And in that vein, Mr. Chairman, I think since there's a consensus that we'd like the bill to be adopted, I would hope that the witnesses spend much of their time telling us which records should be available and how to make those records available and I yield back.

Mr. COBLE. I thank the gentleman.

We're also pleased to have with us the distinguished gentleman from Florida and the distinguished gentleman from Ohio, Mr. Feeney and Mr. Chabot.

Today we have four distinguished witnesses, one from the Federal Government, one from local government, one from the private sector, and the final witness from a public interest group serving worker rights.

Our first witness is Mr. Michael Kirkpatrick, Assistant Director of the Federal Bureau of Investigation. Mr. Kirkpatrick is in charge of the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia, the largest division within the FBI. Mr. Kirkpatrick has over 21 years of service in the FBI and has served at FBI posts in New Orleans, Pocatello, San Antonio, Cleveland, and Kansas City, Missouri. In his long and distinguished career he has investigated or supervised investigations relating to counterterrorism, counterintelligence, civil rights, applicant investigations, and white collar crime matters. Mr. Kirkpatrick is a certified public accountant and a graduate of Purdue University in West Lafayette, Louisiana.

Our second witness is the honorable Jeanine Pirro, district attorney for Westchester County, New York. Ms. Pirro was first selected to serve as the chief law enforcement officer for Westchester County in 1993. Immediately prior to that she served as a county court judge after serving in the district attorney's office in many distinguished positions for over 15 years. Ms. Pirro is the author of two books, several articles, and is a frequent commentator on national television. She has brought criminal justice issues to the people by hosting and producing two local cable television shows. Ms. Pirro has received numerous awards, including most recently the Distinguished Women in Law Enforcement Award from the New York Law Enforcement Foundation. She holds a bachelor's degree from the University of Buffalo and a Juris Doctorate from the Albany School of Law.

Our next witness is Mr. Don Walker. Mr. Walker serves as chairman of Securitas Security Services, U.S.A., Inc., a subsidiary of the Securitas Group. With over 120,000 security officers and over $3 billion in revenues, Securitas is one of the world's largest and most respected international security companies.

Mr. Walker has held numerous executive positions with Pinkerton's, Inc., including chairman, CEO, and president. He is past president of the American Society for Industrial Security and currently co-chairs their Commission for Security Guidelines. He's also a member of the board of directors of the National Association of Security Companies and a member of the International Association of Chiefs of Police. Mr. Walker is a former special agent of the Federal Bureau of Investigation and holds a bachelors degree from the

University of Louisville and a Juris Doctorate from the Nashville School of Law.

Our final witness is Mr. Louis Maltby, founder and president of the National Work Rights Institute. Mr. Maltby is a nationally recognized expert on human rights in the workplace and was an original founder of the National Workplace Rights Office of the American Civil Liberties Union. Mr. Maltby holds a Bachelor of Arts degree and a Juris Ddoctorate from the University of Pennsylvania.

I apologize to you all for my lengthy introduction, but I think it's important that all of us recognize the background and the expertise that these witnesses do bring to the witness table.

Lady and gentlemen, as you all have been previously advised by us, I hope that you can confine your oral testimony to the 5-minute mark, and we impose the 5-minute mark against us, as well, when we examine you all. Your 5 minutes will be up when you see the red light illuminated on that little panel on your desk, and when the amber light illuminates, you will know that you'd better start scurrying because it'll soon be red.

Thanks to all of you for being here, and Mr. Kirkpatrick, we will start with you.

STATEMENT OF MICHAEL KIRKPATRICK, ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, DEPARTMENT OF JUSTICE

Mr. KIRKPATRICK. Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to appear before you this afternoon to discuss the FBI's fingerprint identification program. I have provided a written statement for the record but I would like to make just a few comments.

Since 1924, the FBI's been the national repository for fingerprints and related criminal history data. Today our fingerprint holdings are divided into two categories: criminal and civil. The FBI's master criminal fingerprint file contains the records of approximately 47 million individuals while our civil file contains the records of approximately 31 million individuals.

The civil file primarily contains fingerprints of people who have served or are serving currently in the U.S. military or in the Federal Government. A civil fingerprint card may also be submitted regarding an individual who is seeking employment for a position of trust, such as Federal employment, adopting a child, seeking U.S. citizenship, or serving as a volunteer. Civil fingerprint checks are submitted to the FBI based upon a specific Federal law authorizing such a check or based upon a State or municipal statute which authorizes such a check in compliance with Public Law 92-544.

Every day the FBI receives, as you pointed out, nearly 50,000 fingerprint submissions. During the last fiscal year we received a total of almost 18 million fingerprint submissions. Of this amount, approximately 48 percent or 8.6 million of those fingerprint submissions were civil submissions. Our response goal for civil fingerprint cards electronically submitted to the FBI is to process and provide a response within 24 hours. Today we are meeting this goal 99 percent of the time and, in fact, our average response time is approximately 2 hours.

So what is the benefit of conducting civil fingerprint background checks? Our statistics show that an average hit rate of 12 percent for civil fingerprint checks. This equates to approximately 900,000 checks every year being identified to individuals with existing criminal history records.

In addition to the fingerprint check, all civil background checks undergo a name-based search against the wanted person file and the terrorist watch list that are located within the National Crime Information Center.

As Congress considers expanding the occupations and professions which require fingerprint-based background checks, I would suggest that the need to develop a comprehensive national infrastructure to support such checks is vitally needed. Specifically, many law enforcement agencies, which typically are the starting point for the capture of civil fingerprints, are either not equipped to do so in an efficient manner or do not have the personnel resources to do so.

State identification bureaus, which also play a key role in this process, are likewise often underequipped and understaffed. This limits the ability to conduct a thorough and timely check for those who are applying for positions of responsibility and trust and could ultimately result in the need to institute some type of prioritization of such checks as the existing infrastructure become overloaded.

While the answers to the needs I have just raised are currently undetermined, the FBI, Department of Justice and our partners are in the process of finalizing the feasibility study required under section 108(d) of the Protect Act, Public Law 108-21. This study will begin to answer many of the questions concerning how best to develop a national infrastructure to accommodate the growing demand for fingerprint-based background checks.

Mr. Chairman, I'd like to invite you and Members of the Committee to visit us in West Virginia and personally see the investment in our state-of-the-art fingerprint technology. Thank you again for the privilege to appear before you and I will obviously be available for any questions that you might have.

[The prepared statement of Mr. Kirkpatrick follows:]

PREPARED STATEMENT OF MICHAEL D. KIRKPATRICK

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM MICHAEL D. KIRKPATRICK AND I AM THE ASSISTANT DIRECTOR IN CHARGE OF THE CRIMINAL JUSTICE INFORMATION SERVICES DIVISION OF THE FBI. I THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE IN ORDER TO DISCUSS THE FBI'S FINGERPRINT IDENTIFICATION PROGRAM.

SINCE 1924, THE FBI HAS BEEN THE NATIONAL REPOSITORY FOR FINGERPRINTS AND RELATED CRIMINAL HISTORY DATA. AT THAT TIME, 810,188 FINGERPRINT RECORDS FROM THE NATIONAL BUREAU OF CRIMINAL IDENTIFICATION AND LEAVENWORTH PENITENTIARY WERE CONSOLIDATED TO FORM THE NUCLEUS OF THE FBI'S FILES. OVER THE YEARS, THE SIZE OF OUR FINGERPRINT FILES HAS GROWN AND THE DEMAND FOR THE PROGRAM'S SERVICES HAS STEADILY INCREASED. OUR FINGERPRINT HOLDINGS ARE DIVIDED INTO TWO CATEGORIES—CRIMINAL AND CIVIL. TODAY, THE FBI'S MASTER CRIMINAL FINGERPRINT FILE CONTAINS THE RECORDS OF APPROXIMATELY 47 MILLION INDIVIDUALS, WHILE OUR CIVIL FILE REPRESENTS APPROXIMATELY 30.7 MILLION INDIVIDUALS. THE CIVIL FILE PREDOMINANTLY CONTAINS FINGERPRINTS OF INDIVIDUALS WHO HAVE SERVED OR ARE SERVING IN THE U.S. MILITARY OR HAVE BEEN OR ARE EMPLOYED BY THE FEDERAL GOVERNMENT.

A CRIMINAL CARD IS EXACTLY AS THE NAME IMPLIES. IT IS THE FINGERPRINTS OF AN INDIVIDUAL WHO HAS BEEN ARRESTED AND CHARGED WITH A CRIME. A CIVIL CARD IS SUBMITTED REGARDING AN INDIVIDUAL WHO IS SEEKING EMPLOYMENT IN CERTAIN POSITIONS, SUCH AS FEDERAL EMPLOYMENT, THE MILITARY, OR THE BANKING/SECURITIES INDUSTRY; OR IS ADOPTING A CHILD; SEEKING U.S. CITIZENSHIP; OR SERVING AS A VOLUNTEER (E.G., AT A CHILD OR SENIOR DAY CARE CENTER) AND REQUIRES A NATIONAL FINGERPRINT BACKGROUND CHECK AS PART OF THE SCREENING PROCESS. CIVIL FINGERPRINT CHECKS ARE SUBMITTED TO THE FBI BASED UPON A SPECIFIC FEDERAL LAW AUTHORIZING A NATIONAL FINGERPRINT BACKGROUND CHECK, OR BASED UPON A STATE STATUTE OR A MUNICIPAL ORDINANCE, IF AUTHORIZED BY A STATE STATUTE, AUTHORIZING A NATIONAL BACKGROUND CHECK IN COMPLIANCE WITH PUBLIC LAW 92–544.

FOR ITS FIRST 75 YEARS OF EXISTENCE, THE PROCESSING OF INCOMING FINGERPRINT CARDS BY THE FBI WAS PREDOMINANTLY A MANUAL, TIME CONSUMING, LABOR INTENSIVE PROCESS. FINGERPRINT CARDS WERE MAILED TO THE FBI FOR PROCESSING AND A PAPER-BASED RESPONSE WAS MAILED BACK. IT WOULD TAKE ANYWHERE FROM WEEKS TO MONTHS TO PROCESS A FINGERPRINT CARD.

HOWEVER, THAT ALL CHANGED ON JULY 28, 1999, WITH THE IMPLEMENTATION OF THE INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM, OR IAFIS. THE IAFIS WAS THE DAWN OF A NEW ERA FOR THE FBI'S FINGERPRINT IDENTIFICATION PROGRAM AS IT PERMITS THE PROCESSING OF ALL INCOMING FINGERPRINT SUBMISSIONS IN A TOTALLY ELECTRONIC ENVIRONMENT.

EVERY DAY, THE FBI RECEIVES NEARLY 50,000 FINGERPRINT SUBMISSIONS, WHICH ARE SENT TO US IN EITHER AN ELECTRONIC FORMAT OR PAPER-BASED. THE PAPER-BASED SUBMISSIONS ARE CONVERTED TO AN ELECTRONIC FORMAT PRIOR TO PROCESSING ON THE IAFIS. DURING FISCAL YEAR 2003, THE FBI RECEIVED A TOTAL OF 17,736,541 FINGERPRINT SUBMISSIONS. OF THIS TOTAL, 48 PERCENT, OR APPROXIMATELY 8.6 MILLION, WERE CIVIL FINGERPRINT SUBMISSIONS. OF THE NEARLY 8.6 MILLION CIVIL SUBMISSIONS, 73 PERCENT, OR SLIGHTLY MORE THAN 6.2 MILLION, WERE SENT TO US ELECTRONICALLY.

IN ADDITION TO THE ELECTRONIC OR PAPER-BASED METHODS OF SUBMITTING FINGERPRINTS TO THE FBI, THERE ARE TWO PATHS A CIVIL FINGERPRINT MAY TRAVEL. THE MOST COMMON METHOD STARTS WITH THE FINGERPRINTING OF AN INDIVIDUAL AT A BOOKING STATION. THE PRINTS ARE FORWARDED TO THE AUTHORIZED STATE AGENCY FOR A CHECK AGAINST STATE RECORDS. THE STATE AGENCY THEN FORWARDS THE PRINTS TO THE FBI FOR A NATIONAL BACKGROUND CHECK. THIS METHOD COMPLIES WITH PUBLIC LAW 92–544 AND PROVIDES A MORE COMPLETE BACKGROUND CHECK.

THE SECOND PATH INVOLVES THE USE OF A CHANNELING AGENCY, SUCH AS THE AMERICAN BANKERS ASSOCIATION, ABA, OR THE OFFICE OF PERSONNEL MANAGEMENT, OPM. THE ABA AND THE OPM, FOR EXAMPLE, SERVE AS A SINGLE POINT FOR FORWARDING CIVIL FINGERPRINT CHECKS DIRECTLY TO THE FBI. UNDER THIS METHOD, ONLY A NATIONAL BACKGROUND CHECK IS CONDUCTED.

OUR GOAL FOR CIVIL FINGERPRINT CARDS ELECTRONICALLY SUBMITTED TO THE FBI IS TO PROCESS AND PROVIDE A RESPONSE WITHIN 24 HOURS. TODAY, WE ARE MEETING THIS GOAL 99 PERCENT OF THE TIME, AND OUR AVERAGE RESPONSE TIME IS APPROXIMATELY TWO HOURS. ONCE PAPER-BASED SUBMISSIONS ARE RECEIVED BY THE FBI THEY ARE CONVERTED TO AN ELECTRONIC FORMAT, INJECTED INTO THE IAFIS FOR PROCESSING, A PAPER-BASED RESPONSE IS GENERATED, AND THAT RESPONSE IS THEN MAILED TO THE CONTRIBUTOR. IT TAKES BETWEEN FIVE AND TEN BUSINESS DAYS FROM THE TIME A PAPER-BASED CIVIL CARD IS MAILED TO THE FBI AND A RESPONSE IS RECEIVED BY THE CONTRIBUTOR.

SO, WHAT IS THE BENEFIT OF CONDUCTING CIVIL FINGERPRINT BACKGROUND CHECKS? OUR STATISTICS SHOW AN ANNUAL HIT RATE OF 12 PERCENT. THIS EQUATES TO APPROXIMATELY 900,000 CHECKS PER YEAR BEING IDENTIFIED TO INDIVIDUALS WITH EXISTING CRIMINAL HISTORY RECORDS. IN ADDITION TO THE FINGERPRINT CHECK, ALL CIVIL SUBMISSIONS UNDERGO A NAME-BASED SEARCH OF THE SUBJECT AGAINST THE

WANTED PERSON FILE AND THE TERRORIST WATCH LIST LOCATED WITHIN THE NATIONAL CRIME INFORMATION CENTER.

THE FBI CHARGES A FEE FOR PROCESSING CIVIL FINGERPRINT SUBMISSIONS. OUR FEE FOR THIS SERVICE RANGES FROM $16 TO $22 DEPENDING ON THE TYPE OF SERVICE REQUESTED. THE FBI USES THIS MONEY TO OFFSET THE OVERHEAD AND OPERATIONAL COSTS OF PROVIDING THIS SERVICE, AND FOR MAINTENANCE AND TECHNOLOGICAL REFRESHMENTS TO OUR NATIONAL COMPUTERIZED DATABASES.

AS CONGRESS CONSIDERS EXPANDING THE OCCUPATIONS AND PROFESSIONS WHICH REQUIRE FINGERPRINT-BASED BACKGROUND CHECKS, I BELIEVE IT MUST ALSO CONSIDER THE VITAL NEED TO DEVELOP A COMPREHENSIVE NATIONAL INFRASTRUCTURE TO SUPPORT SUCH CHECKS, INCLUDING THE MEANS OF COLLECTING THE REQUIRED FINGERPRINTS, AND PROCESSING THE CHECKS. SPECIFICALLY, MANY LAW ENFORCEMENT AGENCIES, SUCH AS POLICE DEPARTMENTS AND JAIL FACILITIES, WHICH TYPICALLY ARE THE STARTING POINT FOR THE CAPTURE OF FINGERPRINTS, DO NOT HAVE THE RESOURCES TO CAPTURE THE PRINTS FOR A SIGNIFICANTLY HIGHER VOLUME OF NEW CIVIL CHECKS, EITHER ELECTRONICALLY OR MANUALLY. IN ADDITION, FOR MOST OF THESE NON-CRIMINAL JUSTICE CHECKS, A LAW ENFORCEMENT AGENCY IS NOT THE MOST APPROPRIATE VENUE FOR COLLECTING THE PRINTS. STATE IDENTIFICATION BUREAUS, WHICH ALSO PLAY A KEY ROLE IN THIS PROCESS, ARE LIKEWISE OFTEN UNDER-EQUIPPED AND UNDER-STAFFED. THIS LIMITS THE ABILITY TO CONDUCT A THOROUGH AND TIMELY CIVIL CHECKS AND COULD EVENTUALLY RESULT IN THE NEED TO INSTITUTE SOME TYPE OF PRIORITIZATION OF SUCH CHECKS AS THE EXISTING INFRASTRUCTURE BECOMES OVERLOADED.

WHILE THE ANSWERS TO THE QUESTIONS I HAVE JUST RAISED ARE CURRENTLY UNDETERMINED, THE FBI, DEPARTMENT OF JUSTICE, AND OUR PARTNERS ARE IN THE PROCESS OF FINALIZING THE FEASIBILITY STUDY REQUIRED BY SECTION 108(D) OF THE "PROTECT ACT," PUBLIC LAW NO. 108–21, LEGISLATION ENACTED LAST YEAR TO PROVIDE NEW INVESTIGATIVE AND PROSECUTORIAL REMEDIES AND OTHER TOOLS TO COMBAT THE EXPLOITATION OF CHILDREN. THIS STUDY IS REQUIRED TO ADDRESS FOURTEEN SPECIFIC AREAS, SUCH AS "THE COST OF DEVELOPMENT AND OPERATION OF . . . THE INFRASTRUCTURE NECESSARY TO ESTABLISH A NATIONWIDE FINGERPRINT-BASED AND OTHER CRIMINAL BACKGROUND CHECK SYSTEM." THE STUDY WILL BEGIN TO ANSWER MANY OF THE QUESTIONS CONCERNING HOW BEST TO DEVELOP SUCH A NATIONAL INFRASTRUCTURE TO ACCOMMODATE THE INCREASING DEMAND FOR FINGERPRINT-BASED BACKGROUND CHECKS.

IN CLOSING, I WOULD LIKE TO INVITE THE MEMBERS OF THE COMMITTEE TO VISIT THE FBI WEST VIRGINIA COMPLEX AND PERSONALLY SEE OUR DYANAMIC FINGERPRINT PROGRAM AND STATE-OF-THE-ART FACILITIES. I AGAIN THANK YOU FOR THE PRIVILEGE TO APPEAR BEFORE THIS COMMITTEE. I AM AVAILABLE FOR ANY QUESTIONS YOU MAY HAVE.

Mr. COBLE. Thank you, Mr. Kirkpatrick. And we have been joined by the distinguished gentleman from Virginia, Mr. Goodlatte, and the distinguished gentleman from Wisconsin, Mr. Green.

Ms. Pirro, you're recognized for 5 minutes.

STATEMENT OF THE HONORABLE JEANINE PIRRO, DISTRICT ATTORNEY, WESTCHESTER COUNTY, NY

Ms. PIRRO. Thank you. Mr. Chairman and Members of the Committee, I wish to thank you for inviting me to speak this afternoon and I've come here to urge you to implement safeguards that employers desperately need in order to make informed hiring decisions. After more than 25 years in law enforcement I have learned that the first order of Government is the protection of its citizens and Government fails when it does not give employers the right to know who they are hiring and when the Government allows individuals with ulterior motives to fake their identifications, to apply for jobs without verification of who they truly are.

I come from a county of almost 1 million people and we prosecute almost 35,000 cases every year. I have seen virtually every kind of violation of the law in my work as both a judge and a prosecutor and what I know is that every day individuals seek employment in communities around this country for sensitive positions, positions of trust, and a history of maintaining or violating the laws of our society are essential factors to be weighed by prospective employers before making a hiring decision.

The public policy objective is self-evident. Employers deserve access to public information regarding those who seek their trust, yet our laws do not provide a uniform mechanism for most employers to access what is perhaps the most telling information about an individual—a person's criminal record.

There are many things about our lives that we are entitled to keep private. Criminal convictions are not among them. Criminal convictions are a matter of public record and if Government fails to even assist in securing the safety of its citizens it is abrogating its most essential duty.

You have the means to provide broad access to these records and I would argue the obligation to do so. The lack of uniformity in our statutes across the country has led to the hiring of individuals who misrepresent themselves and their past in order to obtain a job. In an age of identity theft, even the documentation an applicant might supply is potentially suspect. And in the post-9/11 era when we restrict legitimate employers from finding out critical information about job applicants, we do so at the risk of public safety.

A piecemeal approach to this issue is not the answer. By selectively identifying careers that will allow employers to seek access to public records containing criminal histories, we effectively preclude other equally desiring employers from the same access. It is time for Congress to act and to do so with recognition that it is in the best interest not only of business but of our nation to craft a statute that allows for inclusive rather than exclusive access to these already public records.

Allow me to give you a couple of examples of how piecemeal efforts at the State level have resulted in far too many holes. In Westchester County we are entitled to know if someone is working in a day care facility whether that individual has a previous criminal record and yet private individuals who hire someone to care for their children at home are not entitled to that very same information. And it was only when a 10-year-old was thrown against a wall in Westchester and killed—a 10-month-old; excuse me—that we decided that we should change the law to give parents access to information of prior criminal histories. In that case the individual had a prior history, criminal history, that the parent was not allowed to access.

Most employers have no way of knowing who they're hiring. Just 2 weeks ago I addressed the American Campers Association when I heard an outcry from camp directors that their efforts to run background checks on prospective employees are stymied by lax or nonexistent State statutes. The reality for them is that they're forced to rely on individuals who simply want the job, putting their campers and their business and reputation at risk.

Our laws are a disjointed hodgepodge of narrow provisions enacted one at a time on a position-by-position basis with no attempt to rationalize why one sensitive position is subject to a criminal history check while a different comparably sensitive position is not.

On school buses in New York there are often two adults in close confinement with our children—the bus driver and the monitor. The bus drivers are subject to criminal background checks. The bus monitor is not. I cannot tell you how many monitors we've prosecuted in Westchester who would not have been hired had there been any information that could be verified regarding their criminal backgrounds.

And after a case in which a public school teacher sodomized an 8- and 9-year-old boy in Westchester we found out that that individual had had three prior criminal convictions that the school could not access. The school was entitled to that information and those children should not have been subjected to that sodomy, which will forever affect their lives.

Those who affect children and work with children are but one example. The issue here is not whether someone with a criminal past should be disqualified from all employment. Those who've been punished for breaking our laws should have every reasonable opportunity to progress toward a normal law-abiding life. But when there is a relationship between their criminal history and the job, the employer should be allowed to make an informed decision.

Just this morning when I was at the airport coming here——

Mr. COBLE. Ms. Pirro, if you can wrap up?

Ms. PIRRO. I am.

Mr. COBLE. Your time has expired.

Ms. PIRRO. I'm right there.

Mr. COBLE. All right.

Ms. PIRRO. I was required to take off my shoes, my jacket, my coat, and be scanned. This is a privacy issue and I was more than willing to subject myself to that for national security and safety. And yet criminal histories that are already public records are not allowed to be accessed and I believe that we have an obligation to give to employers the right to know who it is they're hiring. Thank you.

[The prepared statement of Ms. Pirro follows:]

PREPARED STATEMENT OF JEANINE FERRIS PIRRO

Mr. Chairman, Members of the Committee:

I first wish to thank the Committee for inviting me to speak this afternoon. I have come to Washington to urge you to implement safeguards employers desperately need in order to make informed hiring decisions.

Every day individuals seek employment in communities around the United States for sensitive positions—positions of trust. Histories of maintaining or violating the laws of society are essential factors to be weighed by prospective employers before making these hiring decisions. The public policy objective is self-evident: employers deserve access to public information regarding those who seek their trust.

Yet, our laws do not provide a uniform mechanism for most employers to access what is perhaps the most telling historical information about an individual—the person's criminal record. There are many things about our lives that we are entitled to keep private. Criminal convictions are not among them. Criminal convictions are matters of public record. If government fails to assist in securing the safety of its citizens, it is abrogating its most essential duty. You have the means to provide broad access to these records and, I would argue, an obligation to do so.

This lack of uniformity in our statutes has lead to the hiring of individuals who have misrepresented their past in order to obtain their positions. In the age of iden-

tity theft, even the documentation an applicant might supply is potentially suspect. And in the post-9/11 era, when we restrict legitimate employers from finding out critical information about job applicants, we do so at the risk of safety and security.

A piecemeal approach to this issue is not the answer. By selectively identifying careers that will allow employers to seek access to public records containing criminal histories, we effectively preclude other equally deserving employers the same access. It is time for Congress to act and to do so with the recognition that it is in the best interest not only of business, but of our nation to craft a statute that allows for inclusive rather than exclusive access to these public records.

Allow me to give you a sense of how piecemeal efforts to solve this issue at the state level have resulted in far too many holes in the safety net.

In almost three decades of service to law enforcement, it has become abundantly clear to me that pedophiles are the most cunning, devious and deceptive of criminals. It is almost invariably the case that pedophiles will groom their intended victims before undertaking actual sexual contact. The most effective means of ensuring that their crimes are not uncovered is to establish themselves as respected and responsible members of society. Frequently, this involves finding employment that puts them in direct contact with children.

Employers are permitted by law to inquire if an applicant has ever been convicted of a crime, permitted to require a formal statement on a written application to this effect, permitted to deny employment if the listed criminal conviction bears a relationship with the job offered, and to discharge the employee if the written statement is false.

But with selected exceptions, most employers have no way of determining whether the statement the employee has given is the truth, or is a lie. Just two weeks ago, I addressed the American Campers Association where I heard an outcry from camp directors that their efforts to run background checks on prospective employees are stymied by lax or non-existent state statutes. The reality for them is that they are forced to reply perhaps on the false assertions of an applicant, putting their campers and themselves at risk. And they are but one category of employers who want access to these public records—access which is denied.

The fact is that our laws in this area are a disjointed hodge-podge of narrow provisions, enacted one at a time on a position-by-position basis, with no attempt to rationalize why one sensitive position is subject to a criminal history check while a different, comparably sensitive position is not. At best, legislatures across this country are constantly closing the barn door after the horse has escaped: enacting legislation in the aftermath of a tragedy, limited to the singular situation that tragedy involved.

Under New York law, for example, child-care employees in a day care facility are subject to mandatory fingerprinting and criminal history checks. But in the early 1990's similar caregivers *working in their employer's homes* were not. As a result, when a family in my county hired a young woman as the nanny for their 10-month-old son Kieran, and attempted to conduct a criminal background check on her, they were told that New York law did not permit it. So they never knew of the woman's criminal past, which she indeed had. Not until it was too late. Not until after the woman hurled 10-month-old Kieran across the room, killing him.

As a result of this brutal homicide, working with Governor Pataki and the New York Legislature, in 1998, we passed "Kieran's Law" to remedy this situation. But "Kieran's Law" remedies only this situation. Scores of similar disparities continue to exist.

For example, on school buses in New York, there are often two adults in close confinement with our children: the bus driver and the bus monitor. School bus drivers are subject to criminal background checks; school bus monitors are not.

After a case in which a public school teacher with a criminal history was convicted of sodomizing two young boys, New York enacted the "Safe Schools Against Violence in Education" Law which required fingerprinting and criminal background checks for all prospective public school teachers and public school employees and volunteers. But the law does not affect currently employed teachers, or teachers in private schools, or volunteers working in group homes, or camp employees, or the employees of private contactors. No, the unfortunate reality is that we will have to await the commission of future criminal acts before these criminal history problems will be addressed.

Those charged with the care of children are but one example. The necessity for employers' access to criminal record checks holds true for any number of prospective employers engaged in sensitive commerce. Must we wait until the employer's faith is betrayed by the applicant who repeats his crimes? What answer do we have for an employer who unwittingly hires an individual with a criminal history of violence? Can we afford to take the chance that a job applicant has told the truth when in

fact her intent is to gain access, through this employment, to new victims? Are terrorists any different than pedophiles when it comes to hiding their past and, thus, their motives for obtaining employment?

The issue here is not whether someone with a criminal past should be disqualified from all employment. Those who have been punished for breaking our laws should have every reasonable opportunity to progress toward a normal, law-abiding life. But when there is a relationship between the employee's criminal history and the job, employers should be allowed to make informed decisions.

We exist in a modern, mobile, Internet-connected society. This is *the information age*. Yet we provide the opportunity for prospective employees get away with lying because we deny employers the right to access public records in order to verify the information they have been given.

I ask the members of Congress to consider that a piecemeal approach to criminal history checks has created a flawed dragnet—catching some, while letting the rest pass through. We shouldn't wait until more tragedies occur to address this problem. And we shouldn't have to engage the laborious legislative process every time we realize that a criminal history check is appropriate in a specific situation.

I respectfully ask this Committee to recognize the importance of a standard, uniform procedure which can be utilized by all employers, whose foremost interest—like our own—is protection and security.

Mr. COBLE. Thank you, Ms. Pirro.

Mr. Walker?

STATEMENT OF DON WALKER, CHAIRMAN, PINKERTON SECURITY, EXECUTIVE MEMBER, AMERICAN SOCIETY OF INDUSTRIAL SECURITY, BOARD OF DIRECTORS, NATIONAL ASSOCIATION OF SECURITY GUARD COMPANIES

Mr. WALKER. Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to be here to testify on behalf of S. 1743 and urge the quick adoption by the U.S. House of Representatives. We badly need this legislation to ensure that persons who are convicted of serious crimes are identified before they are deployed to protect our citizens and their property.

There are roughly 800,000 sworn law enforcement officers in the United States to protect a population of over 290 million people. Police agencies are called upon to deter and solve serious crimes while being engaged in a fight against potential terrorist attacks orchestrated from abroad. Unfortunately there is simply neither the public resources nor the personnel to do the job comprehensively, as we would like to see it done. Therefore in this era of increased demand for better protection, private security officers are being asked to fill the gap, fill the gap in homeland security.

Today the private security industry employs nearly 2 million people. Security personnel are on duty protecting America in places where our citizens are working, living, and playing. In addition, 85 percent of the nation's infrastructure is owned and operated by private industry and private security officers protect the vast majority of those assets.

Also, most of the first responders in the case of an attack or other emergency in an office building, manufacturing plant, public utility, shopping malls, and so forth are private security officers.

Generally the regulation for private security officers is left to the State. However, 10 States do not have laws regulating private security and less than one-half of the States require an FBI criminal history check before licensing.

Why should we care? I'd like to give you two examples. One is in the State of California. In 2003 there were over 69,000 applicants for a Guard Card. Of those applicants, 9,000 or more than

13 percent of the applicants were rejected after information was received from the FBI Criminal Information System and these individuals were denied a Guard Card. Interestingly, the three most common reasons for denial were one, sex-related crimes; two, battery and robbery; and three, burglary. Data also showed in California that registered sex of fenders frequently attempted to obtain a Guard Card.

In my home State of Illinois a review of January 2004 records for applicants that applied for a guard position showed that the FBI criminal history check provided serious criminal information four times more frequently than the State-wide check within the State of Illinois.

Another problem within our industry is turnover and if you use a conservative 50 percent turnover rate there are more than 79,000 security officers that are being hired each month with less than one-half of those individuals being screened by an FBI check. That's over 300,000 people being employed since the Senate passed this bill in November.

Another factor which has been alluded to is the problem of fraud, applicant fraud and identify and identity theft.

Mr. Chairman, to the specifics of this bill, first of all, it's the product of a bipartisan group of senators who share the belief that Congress needs to act swiftly to prevent persons who have committed serious crimes from being hired into positions of trust to protect their constituents, their families, their homes, and places of employment. 1743 is not a panacea. It is an important and necessary tool for the security industry to keep the bad apples from being placed in positions of responsibility.

Finally, the bill covers three major objectives. One, the bill permits security companies to request an FBI fingerprint check regarding prospective employees. Two, the bill protects the individual's privacy by requiring that an applicant provide a written authorization to an employer requesting the FBI record check before such check is initiated. Further, the form and content of the information provided to the employer will be consistent with State laws and regulations. Finally, the bill does not impose any unfunded mandates on the States and employers may be assessed a fee to handle their requests. In addition, the States may opt out or decline to participate in the system.

In summary, Mr. Chairman, passage of 1743 will be a much improved system and provide quality controls that will block the most serious offenders from gaining employment in the private security industry. The industry needs it but, more importantly, our nation needs it. Thank you very much.

[The prepared statement of Mr. Walker follows:]

PREPARED STATEMENT OF DON WILSON WALKER

Mr. Chairman and Members of the Subcommittee, I am Don Walker, Chairman of Securitas Security Services USA, Inc. Securitas is a world-wide leader in providing security services to individuals, businesses, government and private entities.

I appear today in my capacity as Chairman of the nation's largest employer of private security officers and as a former President of the ASIS International (ASIS), the security industry's largest professional membership organization with over 35,000 members. I am also co-chair of the ASIS Security Guidelines Commission.

I very much appreciate the opportunity to testify today in support of S. 1743, the "Private Security Officer Employment Authorization Act of 2003," and to urge its

quick adoption by the U.S. House of Representatives. We badly need this legislation to ensure that persons who are convicted of serious crimes are identified before they are deployed to protect our citizens and their property. Americans need to know that private security officers are part of the solution—not an impediment—to preventing harm from any foreign or domestic threat.

By way of background, Securitas AB (Securitas), our parent company, is organized and headquartered in Sweden. Securitas acquired Pinkerton's, Inc. (Pinkerton) in 1999. Although we generally operate in the United States under the Securitas name, Pinkerton still operates in several localities. At the time of the acquisition, Pinkerton was the nation's oldest, largest and one of the most respected security officer companies. Indeed, Pinkerton remains one of the most recognizable brand names for any product or service around the globe.

Pinkerton has a rich history dating back to1850, when the legendary Allan Pinkerton, the "original private eye," founded the company. Since its inception, the company has become synonymous with protecting the American public from an array of threats from outlaws, bandits and thieves. In 1861, Pinkerton achieved national recognition when he uncovered and foiled a threat to assassinate Abraham Lincoln. Later that year, Pinkerton formed the federal Secret Service, of which he became chief. Early in the company's history, Pinkerton apprehended some of the nation's most notorious train and/or bank robbers and started the interstate identification system to track bandits from State to State. In the time since, Pinkerton has been at the forefront of improving the screening, pay and training of security officers.

In 2000, Securitas acquired another legendary American private security company. Burns International was founded in 1909 by William J. Burns, who was known as "the greatest detective the U.S. had produced." In 1921, he was appointed director of the newly formed Bureau of Investigation that later became the FBI. Like Allan Pinkerton, Burns' drive, determination and commitment to service helped his company grow from a small detective agency to the second largest security provider in the U. S.

Long before the tragic events of September 11, Securitas and our predecessors called for higher standards and qualifications for private security officers. Our personnel and customers—your constituents—deserve no less.

I reference this history as a way of introducing the company's credentials as well as its long and proud tradition and experience of protecting the country's human and physical resources. I am proud to say that Securitas USA, as part of the global Securitas Group, remains committed to the principles of our founders. Securitas is built around a core set of values—Integrity, Vigilance and Helpfulness. Like other responsible employers in the U. S. security industry, we must constantly strive to improve the standards of our profession. Our people are the essence of Securitas and we believe in building relationships based on mutual respect and dignity with all our employees. To enable our people to carry out their professional duties, we constantly provide training programs and promote higher wages and industry standards.

Mr. Chairman, I would like to cite one simple but very important statistic that is at the heart of the debate today over whether to authorize a national system for criminal background checks for private security officers.

The fact is this: There are roughly 800,000 sworn law enforcement officers in the United States today to protect a population of over 290 million residents. Never in the history of the nation have law enforcement agencies been called upon to fulfill two fundamentally different and competing missions—to deter domestic crime while also being engaged in the fight against potentially new and devastating terrorist attacks orchestrated from abroad. Unfortunately, there are simply neither the public resources nor the personnel to do the job as completely or comprehensively as we all would like. Consequently, in this era of heightened need and demand for better security, private security officers are being asked to fill the gap.

The role of private security was recently highlighted by Admiral James Loy, the Deputy Secretary of the Department of Homeland Security. He stated at a recent conference in Washington that, ". . . unlike wars of the past . . . this is not going to be a situation where the federal government simply does it for the nation." We concur.

Today, private security companies collectively employ nearly two million security officers nationwide. As we speak, security personnel are on duty protecting American businesses, public offices, schools, shopping centers and housing communities. In addition, private security officers are stationed at many of the nation's critical infrastructure sites and facilities including nuclear plants, public utilities, oil pipelines, ports, bridges, tunnels and many other places where our citizens live, work and play.

Recent estimates indicate that 85% of the nation's infrastructure is owned and operated by private industry. Private security officers protect the vast majority of these assets. Similarly, the overwhelming majority of "first responders," who are first on the scene in the case of an attack or other emergency situation in our manufacturing plants, office buildings, banks, public utilities, shopping malls, are, more often than not, private security officers.

Mr. Chairman, a 2003 Presidential report entitled, "The National Strategy for the Physical Protection of Critical Infrastructure and Key Assets," noted . . . "the private sector generally remains the first line of defense for its own facilities." Further, the report states that the [Strategy] "provides a foundation for building and fostering the cooperative environment in which government, industry and private citizens can carry out their respective protection responsibilities more effectively and efficiently." The legislation under discussion today is but one of many key elements that are required in order to fulfill our responsibilities as providers of reliable security services.

Clearly, private security is an integral part of our homeland security. In times of crisis and disaster, businesses rely on private security to protect people and property. And yet, with so much at risk, and so much being protected by private security forces, there is little in the way of federal oversight or regulation of the people we employ.

For the most part, regulation of the private security officers is left to the States. Only forty (40) States have laws on their books regulating security officers. Of the forty (40) States with licensing requirements, thirty-one (31) States either permit or require an applicant to undergo a FBI fingerprint check for prior criminal history. However, in those thirty-one (31) states, an FBI fingerprint/background check is permitted but not required in some jurisdictions, and required in seven (7) states when the person is applying for an armed guard position only. Thus, more than half the States do not automatically subject applicants to some type of background check. (See Attachments 1 and 2.)

Why should we care? What does it matter? Here's why Congress needs to act.

In 2003, in the State of California, there were over 69,000 "Guard Card" applicants. Of those applicants, almost 18,000 had an FBI "rap" sheet indicating some sort of a prior criminal history. Thanks largely to a new law that went into effect in California in 2003, over 9,000 or 51% of those applicants with a rap sheet were denied a guard card. Prior to the implementation of the law, security officers could have been employed on a temporary basis for three months or longer. Interestingly, the three most common reasons for denial were for sex related offenses, burglary/robbery and battery convictions. Data also showed that registered sex offenders frequently attempted to obtain a guard card.

Although most states do not keep the type of statistics as provided by California, limited information from other States tell a similar story. In States such as Virginia and Florida, the rejection rate due to FBI records checks is estimated by the states to range from about 1% to 4% of all security officer applicants.

In my home State of Illinois, a review of January, 2004 applicants showed that the FBI criminal history records check eliminated four times as many applicants as the Illinois State Police check for crimes committed within the State. Put another way, Illinois State Police clear 87% of all applicants while the FBI check clears only 64%—a 23% difference.

Equally important is the turnover rate among security officers. The security industry records one of the highest "drop out" rates of employees. On average, companies suffer between a 20–70% turnover in security officers. However, some studies suggest a rate ranging between 100–300%. A more conservative estimate is 50%. Thus, at that rate, there are 79,000 new private security officers being hired each month based on the current 1.9 million workforce—and only a relatively few of these applicants are undergoing an FBI criminal history background check because they are employed in states that have not authorized these checks.

Another factor that we must contend with is applicant fraud and identity theft.

I am sure it will come as no surprise to the members of the Subcommittee when I say that people are not always entirely truthful when they fill out a job application. In a word, they lie—who they are, where they live, where they worked, whether they have a criminal conviction history, whether they are living legally in the country and so on. Similarly, the incidence of identity theft has been made easier by computers. Crooks, today, are increasingly sophisticated and are able to manufacture fake documents such as licenses, social security and immigration cards that are near perfect matches to the real thing. Identity theft is rampant throughout the country and afflicts not just our industry but individuals and businesses everywhere.

Consider this example. In Illinois, applicants for a security officer position can complete an application at one of our local offices. If they present some form of identification that appears legitimate, we forward the application to the State Police for a background check. A fingerprint check is automatically conducted in the State and subsequently sent to the FBI. As the statistics cited above demonstrate, the State Police clear a large percentage of applicants (87%). However, if that individual had committed a crime in neighboring states, such as Wisconsin, Iowa, Missouri or Indiana, the State Police check alone would not uncover those crimes. Nor would the check reveal whether the applicant had disclosed his/her true identity. Only a nationwide fingerprint search would ascertain the true identity and background of an applicant.

These are but a few examples of the kinds of situations security companies are facing each day.

Mr. Chairman, let me turn now to the specifics of the legislation under consideration today.

S. 1743 can trace its origins to legislation (S. 1258) introduced in 1991 by then Senator Al Gore. His bill would have required the General Services Administration to promulgate rules establishing standards for the hiring of Federal and private security officers. The bill also mandated that security officers be subject to a criminal background check as a pre-condition of employment. Funds would have also been provided to States to develop a regulatory scheme that mirrored the GSA's standards. In a statement that accompanied the bill, Senator Gore said that, ". . . People naturally believe that security officers are screened and trained with the same diligence as law enforcement officers. In fact, that is not always the case . . . the potential for damage by unfit security officers is obvious. The need for screening is critical." Unfortunately, the bill never gained much support and it died when Congress adjourned at the end of 1992.

Subsequent efforts likewise failed. In 1993, Representatives Martinez and Owens introduced H.R. 1534. Two years later, in 1993, then-Representative Don Sundquist sponsored H.R. 2656. Neither of these bills received much attention. However, in 1996, Representatives Barr and Martinez teamed up and introduced H.R. 2092 the, "Private Security Officer Quality Assurance Act," which would have provided for background checks of individuals seeking a license as a security officer. This bill passed the House on September 26, 1996 but the Senate did not act prior to adjournment that year. In 1997, Representative Barr sponsored H.R. 103, which passed the House on July 28, 1997, but the Senate did not act on the bill. (See Attachment 3 for a legislative history of S. 1743.)

Mr. Chairman, S. 1743 is the product of a bipartisan group of Senators who share the belief that Congress needs to act swiftly to prevent persons who commit serious crimes from being hired to protect their constituents, their families, their homes and places of employment. Sponsors of the original Senate bill (S.2238) included Senators Carl Levin, Fred Thompson, Joe Lieberman and Mitch McConnell. When the bill was first introduced in 2002, Senator Levin said that ". . . this legislation will enhance the Nation's security. As an adjunct to our Nation's law enforcement officers, private security guards are responsible for the protection of numerous critical components of our Nation's infrastructure, including power generation facilities, hazardous materials manufacturing facilities, water supply and delivery facilities, oil and gas refineries and food processing plants—it is imperative that we provide access to information that might disclose who is unsuitable for protecting these resources."

Nothing has changed in the time that has elapsed since the bill's introduction in 2002. In fact, just the opposite is true. The threat of attack by America's enemies persists and grows. Personnel and resources are strained to the limit. The bombings in Spain have further caused authorities to enhance security measures for rail passengers. From whom and where the next target will emerge is uncertain. All of this contributes to our collective sense of vulnerability that our leaders seek to address on a daily basis. We share that responsibility and we take our mission seriously.

Mr. Chairman, S. 1743 is a good bill. It is certainly not a panacea. It is merely an important and necessary tool that the security industry needs to keep the bad apples from being placed in positions of responsibility. Former Senator Warren Rudman, who co-chaired the U.S. Commission on National Security/21st Century, underscored the importance of this legislation in a letter to this Committee. In his December 2003 letter, Mr. Rudman stated, "The legislation's enabling of a review of the criminal history records of prospective private security officers is exactly the sort of public-private cooperation that the Commission viewed as essential to promoting U.S. homeland security." He further stated that ". . . S. 1743 deserves expedited treatment based on the critical gap that it fills in our nation's homeland security."

In its current form, we believe the bill strikes an important and appropriate balance between the interests of applicants, employers and the public.

Essentially, the bill accomplishes three major objectives.

First, the bill permits security companies to request a criminal background check on prospective employees. Requests must be forwarded through the States' identification bureau or a comparable agency designated by the Attorney General of the United States. Employers will not under any circumstances be given direct access to FBI records. The States will serve as the conduit for receiving an employer's request, passing it on to the FBI and, in turn, receive back from the FBI a report as to the suitability of the applicant for employment as a security officer. States may charge a reasonable fee for this service.

Second, the bill protects an individual's privacy by requiring an applicant to provide written authorization to an employer to request a check before such a background check may be initiated. Further, the form and content of the information provided to an employer will be consistent with State laws and regulations governing the qualifications of individuals to be security officers. In those States where there are no standards, employers will only be notified as to whether an applicant has been convicted of a felony or a violent misdemeanor or a crime of dishonesty within the past 10 years.

Finally, the bill does not impose any unfunded mandates on the States. Employers may be assessed a fee to handle these requests. In addition, States may opt out of this regime at any time.

Mr. Chairman, insofar as I am aware, this bill faces no major opposition from any affected interest. It passed the Senate unanimously. The Administration as well as law enforcement officials agree with the scope and intent of the measure. In addition, I would like to include in the hearing record letters from the National Association of Security Companies (NASCO) and ASIS International. (See attachments 4 and 5.) Each of these organizations endorses enactment of this bill. I would add, parenthetically, that responsible members of NASCO and ASIS International have worked tirelessly over the years to improve the security profession. In addition, ASIS has recently published a draft Private Security Officer Selection and Training Guideline that, among other things, encourages States to enact licensing standards and to require FBI criminal history records checks as part of the licensing process.

As noted above, in the four months that have elapsed since the Senate passed the bill, security firms have hired over 300,000 new guards. Only a certain percentage of these individuals have been thoroughly screened. More people are added to employment rolls each day. Most are fit for duty. However, some are not. This bill will plug that hole through which some unqualified candidates have slipped through in the past.

In summary, Mr. Chairman, passage of S. 1743 will establish a much improved system and quality controls that will block the most serious offenders from gaining employment as security officers. The industry will benefit from this legislation and, more importantly, so will our nation. We urge its speedy adoption.

Thank you again for the opportunity to testify on this critical legislation. I will be glad to respond to any question you, or other Members of the Subcommittee, may have.

ATTACHMENT 1

STATES THAT PERMIT OR REQUIRE FBI CHECKS FOR SECURITY OFFICERS

- Alaska
- Arizona
- California
- Connecticut
- Delaware
- Florida
- Georgia
- Illinois
- Iowa
- Maryland
- Michigan
- Minnesota
- Montana
- Nevada
- New Hampshire (armed only)
- New Jersey
- New York (armed only)
- North Caroline
- North Dakota
- Oklahoma
- Oregon
- Pennsylvania (armed required, unarmed may)
- Rhode Island (armed required, unarmed may)
- South Caroline (armed only)
- Tennessee (armed only)
- Texas
- Utah
- Vermont (may do FBI check)
- Virginia
- Washington (armed only)
- Wisconsin

ATTACHMENT 2

STATES THAT DO NOT REGULATE PRIVATE SECURITY OFFICERS

- Alabama
- Colorado
- Idaho
- Kansas
- Kentucky
- Mississippi
- Missouri
- Nebraska
- South Dakota
- Wyoming

ATTACHMENT 3

Legislative History S.1743

•S.1258
Gore
Introduced *6/11/91*
STATUS:
6/11/1991:
Read twice and referred to the Committee on Governmental Affairs.

•H.R.5931
Martinez
Introduced *9/10/92*
STATUS:
9/10/1992:
Referred to the House Committee on Judiciary.
10/9/1992:
Referred to the Subcommittee on Crime and Criminal Justice.

•H.R.1534
Martinez
Introduced *3/30/93*

STATUS:

3/30/1993:

Referred to the House Committee on Education and Labor.

4/28/1993:

Referred to the Subcommittee on Human Resources.

6/15/1993:

Subcommittee Hearings Held.

6/17/1993:

Subcommittee Hearings Held.

9/30/1993:

Subcommittee Consideration and Mark-up Session Held.

9/30/1993:

Forwarded by Subcommittee to Full Committee (Amended).

6/11/1993:

Executive Comment Requested from Justice.

8/27/1993:

Executive Comment Received from Justice.

•H.R.2656
Sundquist
Introduced *7/15/93*

STATUS:

7/15/1993:

Referred to the House Committee on Education and Labor.

7/27/1993:

Referred to the Subcommittee on Labor-Management Relations.

7/15/1993:

Referred to the House Committee on Judiciary.

8/6/1993:

Referred to the Subcommittee on Crime and Criminal Justice.

•H.AMDT.524 amends--H.R.4092
Martinez
Introduced *4/20/94*
STATUS:
4/20/1994 4:55pm**:** Amendment (A026) offered by Mr. Martinez.
4/20/1994 5:39pm: On agreeing to the Martinez amendment (A026) Failed by recorded vote: 80 – 340

•H.R.2092
Barr
Introduced *7/21/95*
STATUS:
7/21/1995:
Referred to the Committee on Economic and Educational Opportunities, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
7/21/1995:
Referred to House Economic and Educational Opportunities
8/4/1995:
Referred to the Subcommittee on Employer-Employee Relations.
7/21/1995:
Referred to House Judiciary
7/28/1995:
Referred to the Subcommittee on Crime.
3/7/1996:
Subcommittee Hearings Held.
3/21/1996:

Subcommittee Consideration and Mark-up Session Held.
3/21/1996:
Forwarded by Subcommittee to Full Committee by Voice Vote.
9/11/1996:
Committee Consideration and Mark-up Session Held.
9/18/1996:
Committee Consideration and Mark-up Session Held.
9/18/1996:
Ordered to be Reported (Amended) by Voice Vote.
9/24/1996 4:11pm:
Reported (Amended) by the Committee on Judiciary.
9/25/1996 7:46pm:
Mr. Barr moved to suspend the rules and pass the bill, as amended.
9/25/1996 7:47pm:
Considered under suspension of the rules.
9/25/1996 7:56pm:
At the conclusion of debate, the Yeas and Nays were demanded and ordered. Pursuant to the provisions of clause 5, rule I, the Chair announced that further proceedings on the motion would be postponed until Sept. 26.
9/26/1996 12:12pm:
Considered as unfinished business.
9/26/1996 12:24pm:
On motion to suspend the rules and pass the bill, as amended Agreed to by the Yeas and Nays: (2/3 required): 415 - 6
9/26/1996 12:24pm:
Motion to reconsider laid on the table Agreed to without objection.
9/26/1996:
Received in the Senate.

•H.R.2184
Ed Bryant
Introduced *7/17/97*
STATUS:
7/17/1997:
Referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
7/17/1997:
Referred to House Education and the Workforce
7/17/1997:
Referred to House Judiciary
7/31/1997:
Referred to the Subcommittee on Crime.
8/19/1997:
For Further Action See H.R.103.

•H.R.103
Barr
Introduced *1/7/97*
STATUS:
1/7/1997:
Referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
1/7/1997:
Referred to House Education and the Workforce
1/31/1997:
Referred to the Subcommittee on Employer-Employee Relations.
1/7/1997:
Referred to House Judiciary
1/28/1997:
Referred to the Subcommittee on Crime.
6/12/1997:
Subcommittee Consideration and Mark-up Session Held.
6/12/1997:
Forwarded by Subcommittee to Full Committee by Voice Vote.
6/18/1997:
Committee Consideration and Mark-up Session Held.
6/18/1997:
Ordered to be Reported by Voice Vote.
6/26/1997 7:03pm:
Reported by the Committee on Judiciary.
7/28/1997 4:14pm:
Mr. Barr moved to suspend the rules and pass the bill.
7/28/1997 4:14pm:
Considered under suspension of the rules.
7/28/1997 4:28pm:
On motion to suspend the rules and pass the bill Agreed to by voice vote.
7/28/1997 4:28pm:
Motion to reconsider laid on the table Agreed to without objection.
7/29/1997:
Received in the Senate.
9/11/1997:
Read twice and referred to the Committee on Judiciary.

•H.R.102
Barr
Introduced *1/7/97*
STATUS:
1/7/1997:
Referred to the House Committee on the Judiciary.
1/28/1997:
Referred to the Subcommittee on Crime.

•H.R.60
Barr
Introduced *1/6/99*
STATUS:
1/6/1999:
Referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
1/6/1999:
Referred to House Education and the Workforce
1/22/1999:
Referred to the Subcommittee on Workforce Protections.
1/6/1999:
Referred to House Judiciary
2/25/1999:
Referred to the Subcommittee on Crime.

•S.2238
Levin
Introduced *4/24/2002*
STATUS:
4/24/2002:
Introductory remarks on measure.
4/24/2002:
Read twice and referred to the Committee on the Judiciary.

•S.769
Levin
Introduced *4/2/2003*
STATUS:
4/2/2003:
Introductory remarks on measure
4/2/2003:
Read twice and referred to the Committee on the Judiciary.

•S.1665
Levin
Introduced *9/26/2003*
STATUS:
9/26/2003:
Read twice and referred to the Committee on the Judiciary.

•S.1743
Levin
Introduced 10/16/2003
STATUS:
10/16/2003:
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10/23/2003:
Committee on the Judiciary. Ordered to be reported without amendment favorably.
10/23/2003:
Committee on the Judiciary. Reported by Senator Hatch without amendment. Without written report.
10/23/2003:
Placed on Senate Legislative Calendar under General Orders. Calendar No. 322.
11/17/2003:
Passed Senate without amendment by Unanimous Consent
11/18/2003:
Message on Senate action sent to the House.
11/18/2003 10:03am:
Received in the House.
11/18/2003:
Referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
11/18/2003:
Referred to House Education and the Workforce
12/1/2003:
Referred to the Subcommittee on Employer-Employee Relations.
11/18/2003:
Referred to House Judiciary
12/10/2003:
Referred to the Subcommittee on Crime, Terrorism, and Homeland Security.

ATTACHMENT 4

NASCO

National Association of Security Companies
1625 Prince Street
Alexandria, Virginia 22314
(703) 518-1477 Fax: (703) 706-3711
e-mail: nasco@concentric.net
www.nasco.org

January 26, 2004

Hon. F. James Sensenbrenner, Jr.
Chairman, House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Re: Support for S. 1743, "Private Security Officer Employment Authorization Act of 2003"

Dear Chairman Sensenbrenner:

The National Association of Security Companies (NASCO) represents the major national and regional contract providers of security officer services. Our members employ more than 300,000 security officers nationwide, protecting homes, businesses, educational institutions, commercial facilities and 85 percent of the nation's critical infrastructure.

NASCO enthusiastically supports the "Private Security Officer Employment Authorization Act of 2003" (S. 1743), which the Senate has passed unanimously. It is now before the House Judiciary and Education and Workforce Committees. This bill will allow security employers to obtain FBI criminal history records checks through criminal justice agencies in every state. Having access to such information is vital for us to confirm that our applicants have no disqualifying convictions outside the state where they are employed. Without express authorization, the FBI check is not available.

At present, only half of the states, roughly, authorize criminal records checks. This bill would allow security employers nationwide to know whether their applicants concealed felony convictions in a state other than where they work. Without S. 1743, however, authority for these checks must be legislated separately by each individual state, or access is denied.

S. 1743 stipulates that the records check, which would be processed electronically, would be done only with the applicant's consent. We would pay a user fee, so there is no cost to the government. The information from the records check will be reviewed by state regulatory or law enforcement agencies. A state could choose not to permit such checks by "opting out" from the bill's coverage, unlikely as that scenario seems, given the huge role that our employees play in homeland security and the enormous stakes involved.

It is our hope that the House will pass S. 1743 early in this year's session. Prior to its unanimous passage in the Senate, the provisions were thoroughly reviewed by the FBI and other interested parties. It is ripe for adoption by the House. NASCO is working closely with ASIS International and other private security, law enforcement and regulatory groups to encourage Members of Congress to take this important, yet inexpensive, step to enhance our ability to protect the lives and property where our employees are assigned from coast to coast. We deeply hope that you will support this measure, and that you will move it quickly toward passage.

Sincerely yours,

Gail M. Simonton
Executive Director & General Counsel

ATTACHMENT 5

1625 Prince Street
Alexandria, VA 22314-2818 USA
703-519-6200 Fax: 703-519-6299
www.asisonline.org

January 26, 2004

The Honorable F. James Sensenbrenner
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Sensenbrenner:

Never has it been so important to ensure that those providing security to our nation's people, places and property are trustworthy. ASIS International, the world's largest association of security professionals with 33,000 members, strongly urges you to take quick and resolute action in support of **S.1743, the "Private Security Officer Employment Authorization Act of 2003**."

Introduced in the Senate with bi-partisan support, and passed by unanimous consent in November 2003, S.1743 is today before the House Committees on Judiciary and Education and Workforce. The bill allows employers and private security firms to request, through State agencies, FBI national criminal background checks on current and prospective employees who provide security services. The government will incur no expense in this program, which will be funded by user fees. Further, employers will not have direct access to criminal records, and the searches will require the consent of the employee or applicant.

As you know, eighty-five percent of our nation's critical infrastructures and key assets are in private hands, including large numbers of facilities in nuclear power and chemicals, refining, telecommunications, food and water, pharmaceuticals and medicine, as well as venues where large numbers of Americans gather to enjoy entertainment and sports. These places are protected mainly by corporate security officers, often with help from contract security firms.

Congress already has passed laws that specifically permit some industries--banking, nursing home, and child care--to check their employees against the FBI's comprehensive records. Such laws recognize that it is vitally important that persons providing critical services have backgrounds commensurate with such responsibilities. Adding security officers to this specific list is necessary and, even now, overdue.

The House should pass S. 1743 without delay. House passage of S.1743 is a high priority for the security industry and the security professionals who belong to ASIS. Before passing the Senate, the bill was vetted thoroughly with the FBI, and it is ready for House passage. ASIS International is working closely on this important legislation with the National Association of Security Companies (NASCO), which represents the contract security guard companies. I urge you to contact me at ASIS (703-518-1484) or Gail Simonton at NASCO (703-518-1477) for further information. Your support of the House's consideration and passage of S.1743 is greatly appreciated.

Sincerely,

Jack Lichtenstein
Director of Government Affairs & Public Policy

Mr. COBLE. Thank you, Mr. Walker.
Mr. Maltby?

STATEMENT OF LEWIS MALTBY, PRESIDENT, NATIONAL WORK RIGHTS INSTITUTE

Mr. MALTBY. Thank you, Mr. Chairman. Let me be clear from the outset that the two critical points the other witnesses have made are absolutely correct. Employers are entitled to relevant criminal information in making hiring decisions and secondly, it is too hard today for employers to get relevant criminal background information. I've been a private employer myself. I've run an HR department. I know from my own experience that it's too hard to get the information you need.

So I agree with the other witnesses on those points and I think what the Committee and the bill are attempting to do is very important, but there's another national objective that's equally important that I don't believe is getting enough consideration in this context, and that is the absolutely imperative need to rehabilitate criminal offenders.

Every year 600,000 people come out of jail in America. There are 13 million people in America today who have been in jail at some point in their lives and it's absolutely imperative that these people become productive citizens again, not just for their own sake but for our sake, because if they can't become rehabilitated they're going to become criminals again and that's going to hurt everyone just as much as putting a bad apple in a guard position.

The most important part of being rehabilitated, and any professional in the field will tell you that, is getting a job. If you have to feed yourself and perhaps your kids, if you can't get a job you know what's going to happen—they're going to become criminals again.

So what our law needs to do is to strike a very careful balance. On the one hand we have to make sure that bad apples don't get into the security guard business. That's imperative. But it's equally imperative that we don't stand in the way of good people who are not going the be a risk as a security guard, who are trying to rehabilitate themselves, by blocking them from employment. That hurts innocent people and the public just as much. We have to get the balance right.

In one respect I believe 1743 does take an important step toward the balance and that is by restricting convictions to a 10-year period. At least a 20-year conviction is not going to come back to haunt someone who's in their middle age and get in the way of them getting a job. It's not relevant and the bill wisely takes it out.

But there are other balancing issues that need more attention. One of them is the definition of an offense that gets reported. Under the bill as written, any offense involving physical force or the attempt to use physical force comes under this bill. That means, to put it simply, if two people are sitting in a bar watching Monday Night Football and they get into an argument because they've both been drinking too much and somebody shoves the other guy or takes a swing at the other guy and misses, that's a criminal offense and it's covered by this bill and now this I'm sorry

to say relatively trivial event is going to hang around for 10 years getting in the way of this person getting a job.

I don't think that that's what people intended when they drafted this bill but that's what it says and I think it's clear that we're all concerned about serious offenses when we talk about qualifications to be a security guard, not a pushing match between two guys who got mad at each other after a fender-bender and we need to be a little more careful about refining the definition of what the offenses are that are covered by this bill.

The definition of security officer I think needs some attention, too. Right now what the bill says is anyone who is responsible for the safety or another person or protecting another person's property is a security officer. That means the parking lot attendant where I parked my car to go to the train this morning is a security officer. If I'd had time to go to the Monocle today the person who took my coat in the coat room would have been a security officer.

I don't think that's what we had in mind. I don't think whoever owns the Monocle needs Federal legislation to tell them how they should hire the coat check person. That's not what we're trying to do but it's what we do. I think that definition needs a little more attention, as well.

And mostly what I'm trying to say is this. America's scared today for good reason. We've all seen 9/11. I lost friends and neighbors in 9/11. My post office in my home town was closed for a month because it was contaminated with anthrax. I'm scared, too. The question is how do we react when we're scared?

A lot of employers are reacting understandably but wrong. Nineteen percent of all companies in America today will not hire anyone who's been convicted of anything at any time in their life. That includes giant companies like Eli Lily. Albert Einstein couldn't work for Eli Lily as a research chemist if he had been convicted of shoplifting as a teenager.

The country needs guidance from Congress on how to respond to the situation with judgement and not by panicking in our fear and making overbroad rules. I would like to see 1743 passed but we need to strike the balance a little more carefully. State legislatures have been working on this for years. They may not have solved the problem but there's a lot of good thinking that's going on at the State level about how to strike this balance and we should look to some of that and do some more thinking ourselves and make sure we get it right before we pass this law. Thank you.

[The prepared statement of Mr. Maltby follows:]

PREPARED STATEMENT OF LEWIS MALTBY

The National Workrights Institute is a not-for-profit organization dedicated to expanding human rights in the workplace.

The Institute supports the objectives of S. 1743. Private security officers frequently occupy positions of responsibility and it is in the public interest to ensure that individuals serving as security officers have the character and integrity to use this responsibility properly.

There are many situations in which a prior criminal conviction makes it inappropriate for an individual to serve as a private security officer. This is especially true when the position requires carrying a firearm. No one wants to see a person who has been convicted of armed robbery serving as a bank security guard and carrying a gun.

S. 1743, by making it easier for employers to obtain information that will help them to hire only qualified people as security officers, is a positive development.

In determining who is qualified to serve as a security guard, it is also important to consider other national priorities. One of these is encouraging the rehabilitation of individuals who have committed criminal offenses. Every year, 600,000 people are released from prison in America. It is vitally important to these individuals, their families, their communities, and our entire society that they rehabilitate themselves and become law abiding responsible citizens. A critical part of rehabilitation is employment. It is virtually impossible for a person to rehabilitate themselves if they cannot get a job. In making rules for the employment of people with criminal records, we must take care not to unnecessarily deny employment to ex-offenders. A criminal conviction must not become a scarlet letter than follows a person for life.

It is vitally important that we strike this balance correctly. If we allow the wrong people to become security officers, these officers will commit or tolerate crime and innocent people will suffer. If we deny employment to people who have rehabilitated themselves we push them back into a life of crime and innocent people will suffer. We cannot play it safe by making the qualifications for serving as a security officer so high that most people can't qualify. We have to do the hard, unglamorous, work of getting into the details and getting the balance right.

S. 1743 contains constructive provisions to strike this balance. For example, section 4(a)(4)(B) (i)(I) provides that only convictions within the last 10 years are to be reported. This protects people from being denied employment because of old convictions that indicate little or nothing about a person's current character.

Additional steps are required to strike the right balance. For example, as drafted, S. 1743 covers all offenses involving "dishonesty" or "physical force". This covers virtually the entire criminal code. Moreover, there is no minimum. Any conviction involving force is covered. It need not be a felony. It need not even be a misdemeanor. A person who got into a shoving match following a traffic accident and was fined $25 by a magistrate would be covered by S. 1743.

This needs to be modified. While a person who has used unlawful force on another will often be unqualified to be a security officer, not everyone who has used force should be disqualified. Some minimum level of offense or harm should be required.

The breadth of the definition of "security officer" also raises concerns. It applies to anyone whose job is to "protect people or property". This sweeping definition includes school crossing guards, parking lot attendants, receptionists, and coatroom attendants. Do we really need an act of Congress to make sure the owner of the Monocle hires the right coatroom attendant?

Technically, of course, the bill doesn't set qualification standards for security officers. It only makes it easier for employers to get certain kinds of criminal history. But a Congressional statement that certain information must be made available to employers who hire security officers will quickly turn this information into de facto qualification standards.

America is afraid of crime. We are especially afraid of terrorism, and with good reason. I lost friends and neighbors on 9/11. My post office was closed for several weeks because it was contaminated with anthrax. I'm scared too.

Employers are afraid. Employers have increased their use of criminal records so fast that the record providers can barely keep up with the demand. Some of this development is healthy. But employers' fear is starting to get the best of their good judgment. A large and growing number of employers now refuse to hire anyone with a criminal record—no matter how minor the offense, how long ago it occurred, and no matter how the person has behaved since the offense. Eli Lilly, one of the world's largest pharmaceutical companies, is one such employer. You could have won the Nobel prize in chemistry, but you can't work at Eli Lilly if you were caught shoplifting as a teenager.

Eli Lilly is not alone in its misguided policy. The Congressional Office of Technology Assessment found that, even before 9/11, 19% of employers refused to hire anyone with a criminal record, even though such policies are in violation of Title VII.

If this trend continues, the economic implications for America are frightening. Approximately 43 million Americans have criminal records. Over 13 million Americans have been in jail at some point in their lives. If this many people become unable to work, our gross domestic product will suffer the greatest drop in our lifetimes and our welfare system will go bankrupt.

Congress needs to provide leadership to employers on the use of criminal records. It needs to show by its own actions that criminal records should be used in the employment process, but used carefully. We need to create guidelines that prevent violent and dishonest people from becoming security officers without casting the net so wide that we undermine the criminal justice systems' efforts to rehabilitate former offenders or damage our economy.

We can meet this challenge. The Institute would welcome the opportunity to help.

Mr. COBLE. Thank you, Mr. Maltby. We appreciate all of you being with us.

We were joined by the distinguished gentleman from Massachusetts, Mr. Meehan, but I think he has since departed.

I recognize myself for 5 minutes.

Mr. Walker, in your statement you indicate that the States will serve as a conduit for receiving an employer's request, passing it on to the FBI. Is it the State or the FBI that determines the applicant's suitability for employment as a security officer?

Mr. WALKER. It would be the State that would make the determination.

Mr. COBLE. Ms. Pirro, you indicate on your website, the Westchester County District Attorneys' website to be specific, that "While our job is to prosecute crimes, our goal is crime prevention." Tell us in some detail what role do background checks play in effective crime prevention?

Ms. PIRRO. Very simply, Mr. Chairman, if we know that someone is a pedophile or has a prior criminal history for the sexual abuse of children, then we will prevent that individual from having access to children because a pedophile will insinuate himself in any employment where he has access to another child. If we can identify who these people are, recognize the high recidivism rate, then in essence we are protecting our children.

Mr. Chairman, there's one thing that I think is very important to note here and that is that criminal histories are public information. Anyone in this room can go into their county courthouse and access a person's criminal record, so this is not information that we're not entitled to.

The issue is whether or not we're going to require employers to go to every courthouse in every State in this country to find out who's applying for a job. In this age of technology we should be able to do that in one step.

Mr. COBLE. Thank you.

Mr. Kirkpatrick, your resources have no doubt been significantly stretched since 9/11. Have your financial and personnel resources expanded commensurately?

Mr. KIRKPATRICK. Mr. Chairman, no, they haven't. To date we have been able to keep up with this significantly expanded demand for our services with efficiency gains brought about through automation. Additionally, as it was noted in my written statement, we have the ability to charge for these checks and that user fee revenue that these checks generate have been used to keep up with the demand for these services.

Mr. COBLE. Mr. Maltby, elaborate for me if you will on any civil liability issues that might arise if employers were not to conduct background checks.

Mr. MALTBY. Mr. Chairman, there are probably situations—I think some of the litigation has occurred already—where an employer in a very sensitive position, perhaps running a day care center, had the opportunity to conduct a criminal record check and failed to do so and that's probably appropriate. If you're running a critical situation like a day care center or running a trucking company, there are certain criminal convictions you ought to be concerned about that ought to be disqualifying events.

Mr. COBLE. Now in your hypothetical when you used the Monocle, what if the owner of the Monocle wanted to do a background check on his employees, his coat check worker, for example? Should he be able to access criminal history records?

Mr. MALTBY. The owner of the Monocle or any other employer ought to be able to access and easily access relevant criminal history but not irrelevant criminal history and the challenge facing all of us is to define what is relevant and what's not relevant. There's no point—the public is not served by streamlining the ability of employers to get irrelevant information.

Mr. COBLE. Mr. Walker, you indicated that the security officer industry records one of the highest dropout rates of employees, and I think you furthermore said that a conservative figure would be 50 percent turnover, which is drastic. What is the industry doing or what can you do to promote employee retention?

Mr. WALKER. Thank you, Mr. Chairman. Yes, 50 percent is very high but that's a conservative estimate. Some of the estimates range anywhere from 100 percent to 300 percent.

Various companies—there are a lot of companies that are members of NASCO, the National Association of Security Companies, who have been working on this problem for years and the responsible organizations have worked to increase wages, which is one of the issues that we talk about in trying to attract better people, to increase wages, and I can tell you what we do in our own company. We have what we call a living wage program that we've implemented in 1999 and we have a rigorous screening program to use the resources that we have available.

We try to sell our wages and benefits to our clients at above market rates. We provide training programs and other opportunities for employees to improve themselves and we also try to promote from within so that we have a number of security officers that started as security officers that are promoted through the ranks of the organization up into top management.

Mr. COBLE. Thank you.

My time has expired. We have been joined by the distinguished lady from Texas, Ms. Sheila Jackson Lee. Good to have you with us, Ms. Jackson Lee.

The Chairman recognizes the Ranking Member, the gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Kirkpatrick, what information gets into the database that's checked?

Mr. KIRKPATRICK. The information that we maintain is fingerprint-based arrests and then the related dispositions of those arrests, whether it be a conviction, a dismissal or an acquittal.

Additionally, as I mentioned, we also conduct name-based checks of the wanted persons file to see if that individual's a fugitive, as well as the terrorist file to see if that person is a known or suspected terrorist.

Mr. SCOTT. And what information is released if someone does a check, send you fingerprints for a check? What information do they get back?

Mr. KIRKPATRICK. The information that we send back is what we would call a criminal history. It's probably more commonly known

as a rap sheet on that individual that would show the arrests and the related dispositions of those arrests.

Mr. SCOTT. So if a person had been acquitted, you would show that they had been arrested.

Mr. WALKER. That's correct, yes.

Mr. SCOTT. Ms. Pirro, is this the information that the parents would get if they did one of those checks?

Ms. PIRRO. The acquittal information?

Mr. SCOTT. Right.

Ms. PIRRO. Probably not. They would get the conviction information. The acquittal would most probably be sealed. There would be a sealing order on that under the New York State criminal history check.

Mr. SCOTT. Well, Mr. Kirkpatrick, do parents do background checks that you're aware of?

Mr. KIRKPATRICK. I'm not aware of any situation that we deal with where an individual parent has the ability to request a national background check, no, sir.

Mr. SCOTT. Ms. Pirro, if a parent does one of these background checks what database do they access?

Ms. PIRRO. It goes to New York State under Kieren's Law in New York State, which is a law that passed as a result of the woman with the prior criminal history throwing the 10-month-old against the wall. It gives employers of individuals who work in their home to care for their children the ability to ask an employee whether or not they can get permission, whether they'll give them permission. In that circumstance they can get a prior criminal conviction from NISIS.

Mr. SCOTT. And the prospective employer would ask who? The FBI?

Ms. PIRRO. No. In New York under Kieren's Law—you see, this is exactly the problem. Every State has kind of a hodgepodge of who can ask for what and from whom. That's why we need a central database and a registry that gives everyone the ability to access the same information because that parent in New York who is doing a background check on the person coming to work in their home to care for their children will not get information about a prior conviction in Connecticut, which can be three miles away from Westchester because it's a different State. They can only access the New York State database.

Mr. SCOTT. So if they've got Federal convictions it wouldn't show up.

Ms. PIRRO. No.

Mr. SCOTT. Hmm.

Well, Mr. Kirkpatrick, you give everything so there's no screening of what comes out.

Mr. KIRKPATRICK. That's correct. We send back the information we have on file to a recognized agency within the State or to a recognized agency that's listed in the legislation that authorizes the background check and that agency then makes a fitness determination on that prospective person.

Mr. SCOTT. Based on what they get.

Mr. KIRKPATRICK. That's correct.

Mr. SCOTT. Okay, Mr. Walker, when you do a background check who do you call?

Mr. WALKER. Currently we would go to the county of residence or county of employment where the applicant has worked or lived for the last 7 years and we would do a court-house-by-courthouse record check.

Mr. SCOTT. So if they were convicted in the adjoining jurisdiction, you wouldn't see that?

Mr. WALKER. We'd have no way of knowing it unless it was reported in that particular courthouse. There have been instances where people have lived in areas that they did not disclose and we had no way to know that and unfortunately it's not a good situation. That's what we're trying to correct.

Mr. SCOTT. And if the bill passes what would you get?

Mr. WALKER. If the bill passes then the State agency that requested the information would get the rap sheet and make a determination as to whether or not the individual was suitable for employment.

Mr. SCOTT. You said the State agency would get——

Mr. WALKER. Yes. Like, for example, in Illinois it might be the Illinois State Police and they would tell the licensing bureau whether or not that person had a significant criminal history and the licensing bureau would tell us that the person is either eligible or not eligible for hire.

Mr. SCOTT. But you wouldn't get the rap sheet?

Mr. WALKER. No, we don't want the rap sheet.

Mr. SCOTT. Thank you.

Mr. COBLE. Ms. Pirro, let me revisit Mr. Scott's question. Mr. Scott is a prospective employer of mine. I apply for a job. I have been prosecuted and convicted. Now he would get that information.

Ms. PIRRO. Well, depending on——

Mr. COBLE. Let me give you a two-part question. I'm prosecuted and acquitted. Now as I understood from your response to his question, he would be beneficiary or someone would be beneficiary of the conviction, but the acquittal would not surface.

Ms. PIRRO. That would not surface. The arrest that results in an acquittal would not surface. The information——

Mr. COBLE. In New York.

Ms. PIRRO. In New York. Only in New York. And every State has a different approach to it.

Mr. COBLE. That seems sort of anomalous is why I wanted to bring it up. You'd think that would be equally important, the acquittal as opposed to a conviction. Just curious.

Mr. Goodlatte, the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, thank you. I don't have any questions.

Mr. COBLE. The gentlelady from Texas, Ms. Sheila Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman and Ranking Member.

I may ask questions that may have been covered in your testimony and I ask your indulgence, since I was held in another meeting and not able to hear the complete testimony, but I have a line of questioning that I would like to pursue.

First of all to Mr. Maltby, maybe you indicated this; maybe there are no problems and I think you're representing the workers association, if I understand it correctly?

Mr. MALTBY. Close enough, ma'am.

Ms. JACKSON LEE. That's a description, not the title. You're involved with those who are employed and working; is that my understanding or representing——

Mr. MALTBY. Our mission is to protect the human rights of people in the workplace, yes.

Ms. JACKSON LEE. All, right, that's what I thought it was. Why don't you give me your concerns about either this legislation or the idea of being able to secure this information.

Mr. MALTBY. Ma'am, I have no concern about employers being able to get relevant information and I think it's worth stating again, and thanks for giving me the opportunity to say so—it is too hard for employers to get that information today. It needs to be streamlined.

The question is what information do we give employers? And what I've been trying to stress is that we don't want to give employers irrelevant information that could cause someone to lose a job for which they should not be disqualified.

And I raise that particularly from the standpoint of our nation's commitment to rehabilitate former offenders. Everyone in America agrees that it's the right thing to do. Everyone agrees it's important. President Bush has joined hands with some people he doesn't usually join hands with to stress the need for former offenders to become rehabilitated so they won't commit another crime. And if you can't get a job you're not going to be successfully rehabilitated. And it's vitally important that if someone is trying to become rehabilitated that they not be denied a job as a security officer or anything else for a trivial offense that really isn't relevant.

And what I'm urging the Committee to do is to reexamine the nature and the breadth of the offenses that this will considers to be relevant because I believe it to be somewhat overbroad.

Ms. JACKSON LEE. Doesn't the aspect, as I recall, of the informing of the employee and getting their permission to secure the information and then allowing them to see it, how do you respond to that?

Mr. MALTBY. Well, ma'am, consent may be very important in the eyes of the law but as a practical matter it really doesn't amount to much because when you need a job and the employer says please consent to this form or we're going to take your employment application and throw it in the waste basket, what choice does the person have but to sign it?

It's really misleading to call it consent. Signing the form is a condition of employment and we can't get around the problem of deciding what's relevant information and what isn't by relying on employee consent.

Ms. JACKSON LEE. Is the information from your understanding to be pulled up would include criminal offenses and civil acts, such as bad credit?

Mr. MALTBY. No, ma'am. I think the bill, to its credit, is very clear that it only involves criminal convictions, not civil problems, not arrests without a conviction, except if they're within the last

year. But virtually every criminal conviction is covered. If two gentlemen get into a fender-bender on the beltway and somebody shoves the other guy and a police officer comes and someone becomes convicted for simple assault or disorderly conduct, that is covered by this bill and I'm concerned that someone who's an ex-offender, who's trying to become a good citizen again, is going to be denied a job opportunity because of a little shoving accident after a traffic accident and that's not what we're trying to accomplish here.

Ms. JACKSON LEE. Well, I hope you won't be swayed by being in this great and august room, Members of the Judiciary Committee, that we are not concerned about rehabilitation. I happen to be very concerned about that. In fact, I have a good time legislative initiative to address nonviolent offenders.

But what I would ask from you and I'm going to ask Mr. Walker a question to follow up, what kind of fire wall would you suggest that would be included in legislation like this to take into account circumstances that you have mentioned, which are altercations at best? You would not think that they would be threatening to homeland security or threatening to anyone's life and limb but they have had some past record. Do you have a suggestion of any kind of language or process that could be utilized?

Mr. MALTBY. Ma'am, if I were smart enough to come in here and tell you I know the precise definition for how to strike the balance between serious offenses and the ones that we shouldn't be concerned about, I'd be a much smarter person than I am.

But I do believe that that definition can be worked out. I don't think it's impossible and I would very much appreciate the opportunity to work with the Committee and the other concerned parties to try to find the right language that includes the serious offenses but doesn't suck people into the system and cost them job opportunities because of minor offenses.

Ms. JACKSON LEE. Mr. Walker, you represent the private security industry?

Mr. WALKER. That's correct.

Ms. JACKSON LEE. What is your thought about that in terms of having at least some respect for people who have minimal offenses in the past and working in your industry, using this legislation?

Mr. WALKER. Certainly we have a tremendous amount of respect for individuals and the individuals' rights and we work hard to protect that, but there are three points I'd like to make here.

One is arrest records and conviction records currently are public records and everything—if you check a local courthouse for a criminal record you get every piece of information they have in that particular courthouse.

Second of all, under the Fair Credit Reporting Act, if you use an outside agency to do an investigation for you you have to get the employee's consent to do that investigation.

And thirdly, even what may appear to be a minor incident, if it shows the individual has a hot temper and gets into altercations, that person may not be fit for duty to be a security officer.

Under this current legislation that we're looking at today, the protections are actually built in to a greater degree than they currently exist because we would get—as an employer, we would get

nationwide criminal history information but only having that information go to a State agency, a law enforcement agency, an agency of the State government, which would tell us would could either license that person within the State or not. So I think the legislation actually builds in some protections that we don't currently have.

Ms. JACKSON LEE. I thank the Chairman. Thank you.

Mr. COBLE. Thank you, Ms. Jackson Lee.

Mr. Feeney says he has no questions.

Mr. Keller?

Mr. KELLER. No questions, Mr. Chairman.

Mr. COBLE. I know Mr. Scott has another question or two. Let me put one question to you, Mr. Kirkpatrick, and then I'll yield to Mr. Scott.

It is my belief, Mr. Kirkpatrick, that fingerprints are currently probably the most reliable means of positively identifying an individual. Look into your crystal ball into the future and describe what is on the horizon with new technology and biometrics.

Well first of all, am I correct in my assumption about fingerprints?

Mr. KIRKPATRICK. Mr. Chairman, I believe that you are. Fingerprints have a more than 100-year history of positively identifying individuals. They have been proven to work to positively identify a single individual against an extremely large database of the magnitude that we're talking about, tens of millions of individuals.

This is a very good question and it's something that we deal with daily looking into the future on biometrics. We meet regularly with law enforcement leaders from not just this country but internationally. We meet with leaders of the biometrics industry and I would say that in the short and mid-term, which would be up to about 5 years out, certainly fingerprints are going to remain the gold standard for positive identification of individuals.

Looking beyond that time frame, I think that there's other technologies that are emerging, such as iris scans, facial recognition, things like that, that in that period of time will be improved upon and tested against very large populations.

One of the problems with things like facial recognition and iris scans is that criminals do not leave their faces nor their irises behind at crime scenes. They do leave their fingerprints behind and we can take those latent crime scene fingerprints and match them up against our criminal database and find out who committed crimes as an ancillary benefit.

So I think mid-term, fingerprints are it. Looking beyond that there's the possibility that other biometrics will emerge.

Mr. COBLE. Thank you, sir.

The chair recognizes the gentleman from Virginia.

Mr. SCOTT. Thank you.

Mr. Kirkpatrick, let me go back. Did I understand you to say that the FBI includes local convictions in FBI files?

Mr. KIRKPATRICK. That's correct. The FBI fingerprint repository is a national repository and it works in such a way that State and local and Federal law enforcement all report their arrests to us so that it is, in fact, a national repository.

Mr. SCOTT. And Mr. Maltby, as I understand the bill, if a request is made in a State that has a State agency and guidelines and

qualifications for security officers, then the agency—you apply to the agency and they get the information, compare the background check to their qualifications and just say whether the person is qualified under State guidelines or not. If there is no such State agency then you get felonies, convictions involving dishonesty or violence within 10 years or an unresolved arrest within the year.

Mr. MALTBY. I believe that's correct, sir.

Mr. SCOTT. What's wrong with that?

Mr. MALTBY. What's wrong with that is that first, the definitions in this bill cover virtually the entire crimes code. I used to be a criminal defense attorney in my youth and almost every crime on the books involves force or theft or dishonesty. And to put it very concretely, I don't think that someone who tried to buy beer with a false ID at 18 ought to have that become an impediment to getting a job when they're 27. I just don't think that it's relevant, but this bill would provide it to employers and people who are ex-offenders who need to be rehabilitated, who we need to be rehabilitated, are not going to get a job because of this irrelevant information and they're going to be back on the streets committing another crime, which is the last thing anybody wants.

What I'm trying to say is that there are many situations where if you're trying to protect the public safety you just go a little too far. You throw the net real broad and what harm could it do but——

Mr. SCOTT. On the question where you have a State agency, you don't have a problem with that part of it?

Mr. MALTBY. Well, if the State has a real good definition of what's relevant and what's not relevant, then there would not be a problem, but most States don't really have a good definition and if the Federal Government is going to get into this field and try to fix the problem, it really needs to address the issue of what's relevant to employment to be a security officer and what isn't. That's the heart of the question.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. COBLE. I thank the gentleman.

Mr. Green, did you have questions, Mr. Green?

Mr. GREEN. No questions.

Mr. COBLE. The gentlelady from Texas, Ms. Sheila Jackson Lee.

Ms. JACKSON LEE. Let me pursue a line of questioning that I was moving on with Mr. Walker and then Ms. Pirro.

You mentioned under New York law that you would surmise that acquittals would not be included in information either transmitted or utilized, so therefore if someone went through the judicial system and was acquitted it would not be included?

Ms. PIRRO. The arrest would not be included. As well, if it resulted in an acquittal that becomes a sealed record. So it's not as though there would be an arrest out there with no disposition where we just seal the acquittal.

So that would not be——

Ms. JACKSON LEE. Arrest and possibly acquittal.

Ms. PIRRO. Right, right. But I think what's important here is that we keep hearing an example of someone who throws a punch and misses. In virtually every State that is not a crime. That is a violation if there isn't any injury. And in New York State specifi-

cally there would be no rap sheet or criminal history that would reflect anything less than a crime. So that a violation, a pushing or a shoving, would not be on the rap sheet to begin with.

Ms. JACKSON LEE. Give us an example of what you might expect that this bill would be able to cull from States around the nation.

Ms. PIRRO. I'm not really in a position to do that in terms of the security industry. I guess my position is a more generic one, and that is this is public information that everyone is entitled—that employers should be entitled to know because we're assuming that the person applying for the job under the scenarios that we keep hearing are people who are in good faith in trying to rehabilitate themselves.

There are people who are not acting in good faith and when there is a history and a record and a conviction beyond a reasonable doubt, that should be able not just to people in the security business but to employers who are hiring individuals who have access to our children or who work in power plants or hospitals or at oil refineries or at any one of a number of manufacturing companies.

Ms. JACKSON LEE. In your personal history as a district attorney, do you note in a particular segment, in this instance private security officers, any unique criminal problems or more unique criminal activity of these private security agents before this kind of system would be put in place? Has there been difficulty in hiring private security officers and finding that they have criminal backgrounds?

Ms. PIRRO. It is difficult to identify those individuals who have a criminal history from another State in New York. That is the problem and just recently in Westchester there were several security guards that my office indicted for sexual assault of students who had criminal histories in other States that we had no way of knowing and that the schools had no way of knowing.

Ms. JACKSON LEE. Mr. Kirkpatrick, is this legislation helpful to your system? Or your system in terms of participating in this, is this a comfortable fit between legislation like this and what you do?

Mr. KIRKPATRICK. Well, it is. We service a number of different private sector industries and occupations in terms of licensing and employment checks and our stance on this has always been that if there is an appropriate law passed for a particular industry or occupation, we'll do the checks and we will send the results of those checks back to the authorized agency to review those records and make a determination as to whether or not that particular individual meets the qualifications for that employment situation in that particular locality.

Ms. JACKSON LEE. And in this instance the State entity would be fine with you?

Mr. KIRKPATRICK. That fits in with our model as we currently do business, yes, ma'am.

Ms. JACKSON LEE. Mr. Walker, we know that across the board the private security industry has had its ups and its downs. It has been a place of refuge for individuals who have done themselves well by being hired, as I understand, but maybe in the past have had some interaction with the law.

I know to be a certified peace officer, to carry a weapon, it may be that you're prohibited having a criminal record but I know that officers who do not have or individuals that are private security guards who do not carry weapons in certain States have had records in the past.

In your industry have you noted that individuals with those kinds of pasts—and I'm not suggesting a violent criminal record but some interaction—have been able to be successful officers?

Mr. WALKER. I'm not aware of a situation where we in our own company have employed individuals that had a criminal history that became successful officers. In fact——

Ms. JACKSON LEE. And are yours certified peace officers? Do they carry weapons or——

Mr. WALKER. We have some armed security officers, yes, only 1 percent of our workforce.

Ms. JACKSON LEE. And the rest are unarmed.

Mr. WALKER. Yes. And in those cases, in the States where there is legislation, they would not get a license or if they did get a temporary license their license would be revoked and we would have to terminate their employment. But we do a background investigation prior to hiring the individual and we make those local county record checks and we certainly would not employ anyone who had a serious criminal history.

Ms. JACKSON LEE. And do you know of companies within your industry that have done so? And you said serious and I was not saying serious. I said some form of altercation, maybe a juvenile record.

Mr. WALKER. Juvenile records are generally sealed and not available to us.

Ms. JACKSON LEE. So you don't get that.

Mr. WALKER. We do not get that, anyway. And minor misdemeanors are not something that would be a knock-out factor, if you will. In fact——

Ms. JACKSON LEE. That's what I'm trying to get at.

Mr. WALKER. Right. A statistic from Illinois, I think, we very interesting to me. The Illinois State Police, in doing their test in January, had a hit rate where they hit on a rap sheet within the State of like 8 percent and when they went to the FBI the hit rate increased. So the FBI reported back 214, I believe it was, arrests and convictions. The State then did a manual review, an override, and 132 of those conviction records were thrown out as not being relevant to the licensing of a security guard.

So there are safeguards in effect at the State level that would prohibit discrimination against individuals who should be given an opportunity to become rehabilitated and work in the workplace.

Ms. JACKSON LEE. Thank you.

Mr. COBLE. I thank the lady.

Prior to adjournment I want to remind our Members that we have a mark-up that will be conducted to commence shortly after we adjourn. We'd appreciate your remaining for that.

We thank the witnesses for your testimony today. The Subcommittee appreciates your contribution.

This concludes the legislative hearing on S. 1743, the "Private Security Officer Employment Authorization Act of 2003." Thank you for your cooperation. The Subcommittee stands adjourned.

[Whereupon, at 2:38 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

COMMITTEES:
SELECT COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEES:
INFRASTRUCTURE AND BORDER SECURITY
CYBERSECURITY, SCIENCE, AND RESEARCH & DEVELOPMENT

JUDICIARY
SUBCOMMITTEES
CRIME
RANKING MEMBER
IMMIGRATION AND CLAIMS

SCIENCE
SUBCOMMITTEE
SPACE AND AERONAUTICS

MEMBER
DEMOCRATIC CAUCUS POLICY AND STEERING COMMITTEE

DEPUTY CHAIR
CONGRESSIONAL BLACK CAUCUS

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
2435 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3816

DISTRICT OFFICE
1919 SMITH STREET, SUITE 1180
THE GEORGE "MICKEY" LELAND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-0050

ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
(713) 861-4070

STATEMENT BY

CONGRESSWOMAN SHEILA JACKSON LEE
HOUSE JUDICIARY SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

LEGISLATIVE HEARING ON **S. 1743**, THE "PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2003"

1:00 P.M. IN 2141 RHOB

Chairman Coble and Ranking Member Scott, thank you for holding today's legislative hearing concerning S. 1743, the Private Security Officer Employment Authorization Act of 2003. This legislation has very positive intentions, namely to increase the

scrutiny placed on the background of prospective private security officers and to make them more of a "first responder" than a "second responder" in that they would have more responsibility.

A 1992 statistical study by Edwin Zedlewski, a senior advisor to the National Institute of Justice, comparing public and private security in 124 Standard Metropolitan Statistical Areas further strengthens the case for private security. The study found that devoting more resources to public police didn't seem to deter more crime, while devoting more to private security did. The reason behind this result is that since private entrepreneurs – unlike public law enforcement agencies – are under constant competitive pressure to discover new ways to improve their products and services, including discovering new ways to improve community cooperation.

However, I am concerned that the scope of the bill may be too limited. In particular, Section 3 of the legislation, the definitional section, specifies that the term "private security officer" in paragraph (3) (B) does *not* include "employees whose

duties are *primarily internal audit* or *credit* functions." Given my experience with the House Select Committee on Homeland Security's Subcommittee on Cybersecurity, Science, and Research & Development, I must point out that "homeland security" can sometimes totally encompass internal audits or credit checks. Cybersecurity requires that those who are charged with the duty of recognizing electronic fraud and of apprehending perpetrators of this crime must hold a position that would fall under the notion of a "security officer," whether private or public. Therefore, the scope of the legislation with respect to the group regulated is too narrow. In order for a cybersecurity officer to perform his or her duty of recognizing fraud and apprehending perpetrators, he or she would have to have access to the criminal background information that is the subject of S. 1743. This bill must be more precise in its definition of a "private security officer."

Furthermore, Section 4, paragraph (4)(B)(II), which states the parameters by which a state that has no standards for

qualification to be a private security officer can notify an authorized employer of the fact that an employee has been "charged with a criminal felony for which there has been no resolution during the preceding 365 days." Although a felony charge itself raises a flag for employers, a charge is not a conviction. Allowing a state to report this information in the case of a private security officer employment application would amount to deeming the prospective employee "guilty until proven innocent," which raises serious due process in addition to equal protection concerns for the individual. While the legislation, as drafted, would allow states to notify employers of felony *charges,* it is clear from the testimony of the witnesses that the scope of the law would limit this authority to felony *convictions.* The distinction between a charge and a conviction, while it may seem miniscule to some employers, is quite significant to a prospective employee who has no other option of employment and who faces an erroneous charge for which he or she is exonerated on the 366th day.

Chairman and Ranking Member, I agree to the overall premise behind the drafting of this bill; however, we must be careful to balance the need for stronger law enforcement ability with respect for individual privacy. Moreover, if increased law enforcement abilities are to be conferred, we must be sure to properly cross-reference our definitions of "law enforcement agent" before we pass legislation that has wide implications for the securing of our homeland.

Thank you.

QUESTIONS AND RESPONSES FOR THE RECORD FROM MICHAEL KIRKPATRICK

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

June 30, 2004

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and
Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Mr. Michael D. Kirkpatrick, Assistant Director in Charge of the Criminal Justice Information Services Division, Federal Bureau of Investigation, following Mr. Kirkpatrick's appearance before the Subcommittee on March 30, 2004. The subject of the Subcommittee's hearing was the "Private Security Officers Employment Authorization Act of 2003."

We hope that you will find this information helpful. Please feel free to call upon us if we may be of additional assistance in connection with this or any other matter.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Bobby Scott
Ranking Minority Member

Responses of Michael D. Kirkpatrick
Assistant Director in Charge
Criminal Justice Information Services Division
Federal Bureau of Investigation

Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
U.S. House of Representatives

The Private Security Officers Employment Authorization Act of 2003

March 30, 2004

1. The National Crime Prevention and Privacy Compact was signed into law October 10, 1998, establishing an infrastructure by which states can exchange criminal records for non-criminal justice purposes according to the laws of the requesting state, and provide reciprocity among the states to share records without charging each other for the information. ***Please explain what the Compact is, how it works, and what impact it has on the bill we are discussing here today?***

Response:

The National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes, allowing party states and the federal government to disseminate their criminal history record information to other states for noncriminal justice purposes in accordance with the laws of the receiving state. The Compact provides for the establishment of a Council with the authority to promulgate rules and procedures governing such disseminations, subject to certain express statutory reservations of federal authority. In accordance with the Compact, positive identification (through fingerprints) would have to be made prior to the provision of criminal justice information to noncriminal justice agencies for noncriminal justice purposes. The regulatory body responsible for implementing the Private Security Officers Employment Authorization Act of 2003 would be subject to the rules and procedures established by the Compact Council.

2. One of the crucial aspects of any background check that involves a query of data bases, such as criminal history data bases, is that the information being queried is accurate. If not, good people could be denied jobs, and bad people could slip through the cracks and gain employment they should not have. ***What does the FBI do to ensure that records entered***

into their system are accurate, and are updated or expunged as necessary or required?

Response:

The FBI follows many procedures to ensure that records are accurate, updated, or expunged as appropriate. The Interstate Identification Index (III) Standards For Participation and the National Fingerprint File Qualification requirements both advise that record accuracy and completeness are of primary importance and shall be maintained at the highest levels possible. The FBI has incorporated a number of mechanisms to ensure the integrity of data maintained in the III.

The FBI's Criminal Justice Information Services (CJIS) Division's Audit Unit is dedicated to ensuring the integrity of the data contained in criminal history databases maintained by each state central repository (SCR) and the FBI. The integrity of the information contained in these databases is assessed by the auditors from the FBI's CJIS Audit Unit, who conduct on-site audits at the SCR. During the audit, data quality, policies, and procedures are examined.

In addition to audits at the state level, the FBI performs a number of manual Quality Control (QC) checks that are based upon system specifications, CJIS Division policy, and relevant laws and regulations. For example, a QC check is performed on each criminal and civil fingerprint submission processed by the FBI's Integrated Automated Fingerprint Identification System. QC Service Providers make the initial determination of whether the information provided in a submission meets the basic criteria for FBI processing. Service Providers assigned to the QC function validate and/or modify: general submission data, identification comments, special processing flags, charge data, general offense data, court data, etc. If a submission does not meet the basic criteria for FBI processing, the QC Service Provider rejects the submission. Currently, the FBI is implementing the automation of QC functions and the CAU is developing the methodology to audit automated QC functions.

Pursuant to Title 28, Code of Federal Regulations (C.F.R.), Section 50.12, both governmental and nongovernmental entities authorized to submit fingerprints to the FBI must notify the individuals fingerprinted that the fingerprints will be used to check FBI-maintained criminal history records. Further, a statement is placed on all records disseminated for employment, licensing, and similar noncriminal justice purposes notifying officials of the use-and-challenge requirements. If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment must provide the applicant the opportunity to complete or challenge the accuracy of the information. Selecting officials are also advised not to deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined

to do so. These officials also must advise applicants that procedures for changing, correcting, or updating FBI identification records are provided in 28 C.F.R. § 16.34 (U.S. Department of Justice Order 556-73).

Under the National Instant Criminal Background Check System (NICS), an individual denied receipt of a firearm during a covered transaction may appeal the denial as provided in the NICS Regulations (see 28 C.F.R. § 25.10). The individual may request the reason for the denial, receive the "rap sheet" upon the submission of fingerprints (to ensure that the applicant is the record subject), challenge the accuracy of the record upon which the denial is based, or assert that his/her rights to possess a firearm have been restored. The FBI (or a state agency serving as a NICS point of contact) will respond to the individual with the reason(s) for the denial within five business days and advise whether additional information or documents are required to support an appeal, such as fingerprints in appeals involving questions of identity. To facilitate the appeal process, a federal firearms licensee provides such individuals with a brochure regarding the appeal of denials prepared by the FBI's NICS Operations Center.

In addition, since 1995, the Bureau of Justice Statistics (BJS) has assisted States to improve the quality and utility of criminal records through the National Criminal History Records Improvement Program (NCHIP). By the end of FY 2004, NCHIP will have provided nearly $470 million to States, the District of Columbia, and the territories. This funding is being used to upgrade the quality of criminal history record systems, to establish automated fingerprint identification systems, to purchase livescan equipment, to assist States in developing and enhancing the operation of State sex offender registries, and to help ensure that domestic violence-related offenses are included in criminal records.

3. In your written statement, you say that State identification bureaus are understaffed, and law enforcement agencies are not the most appropriate venues for collecting prints for most non-criminal justice checks. ***Please explain how the state identification bureaus work. What would you suggest to keep the infrastructure from becoming overloaded?***

Response:

The State Identification Bureaus (SIBs) operate the states' central repositories. The state repository is the database which maintains criminal history records on all state offenders. Records include fingerprint files and arrest and disposition information. SIBs receive fingerprint submissions for criminal and non-criminal purposes from local and state governmental agencies, and conduct fingerprint-based background checks against the state repository and update their records as necessary. When appropriate, SIBs forward fingerprint submissions to the FBI. These fingerprint submissions may be either paper or electronic, though many SIBs convert paper fingerprint cards to an electronic format for processing within

their systems and for submission to the FBI.

The FBI's CJIS Division has strong liaison relationships with the SIBs, who always advise that the key to avoiding overload is the enhancement of technical and personnel resources. Following are some specific suggestions SIBs have conveyed for avoiding infrastructure overload.

- The capacities of the states' automated fingerprint identification systems (AFISs) were based on the predicted needs at the time of development. While most states have budgeted for maintenance of their AFISs, significant increases in the volume of fingerprint-based background checks may not have been expected and may require substantial system upgrades, which are invariably expensive.

- To accomplish national end-to-end electronic fingerprint capture and transmission capability, most intrastate telecommunication networks need to be upgraded. During transmissions, fingerprint images are represented by large binary data files, and traditional law enforcement networks cannot support transmissions of this type. Even in those states that have upgraded their networks, these networks may not be able to accommodate significant increases in volume or may not permit access to this type of information in remote locations.

- Many SIBs need to update their card scanning, criminal history record information, and administrative systems. Without additional personnel resources, substantial increases in fingerprint submissions would overburden most SIBs.

- The Compact Council recently authorized the outsourcing of functions associated with noncriminal justice criminal history record checks. This will allow federal and state entities to substantially increase their capacities and infrastructure by contracting out all or part of the functions associated with these types of checks. Appropriate use of this new capability should substantially enhance the available infrastructure.

- Funds made available by the National Criminal History Records Improvement Program may be used by States to assist them in becoming fully participating members of the Interstate Crime Control and Privacy Compact.

QUESTIONS AND RESPONSES FOR THE RECORD FROM THE HONORABLE JEANINE PIRRO

Post-hearing Questions for The Honorable Jeanine Pirro, District Attorney of Westchester County, New York, 3-30-04 Hearing on the "Private Security Officers Employment Authorization Act of 2003"

You have extensive experience in investigating and prosecuting crimes against the elderly. *In addition to crimes perpetrated by care givers, what other industries do you believe should be subject to employee background checks, that include national criminal history record checks, because of their relationship to elderly citizens?*

As I stated in my testimony before the subcommittee, any attempt to define high-risk employees on a occupation-by-occupation basis inevitably produces a flawed result. The approach should not be to preordain specific occupations, but to create a flexible system by which all employers, with justification, can seek access to this public information about those they contemplate employing.

QUESTIONS AND RESPONSES FOR THE RECORD FROM DON WALKER

Question 1.

Please explain the process that an employee must undergo to see information obtained about him or her. What is it that the employee actually sees? Does the employee have an opportunity to see what the employer has, if employment is **not** denied? Does this provision only apply to employees, or would this also apply to prospective employees, i.e. applicants?

Answer:
Three points should be clearly understood. **First**, in most jurisdictions, arrest records and criminal conviction records are public records and available to anyone who goes to the courthouse to obtain a copy of such record. **Second**, the regulations and procedures followed by each State are unique to the individual State. **Third**, under the Act, the United States Attorney General shall issue regulations to be followed by each state. However, it is my understanding that the general procedures will be as follows:

An applicant for a security officer position will be fingerprinted. His or her fingerprints will be transmitted to the appropriate State Agency, e.g., a State Police records center. The appropriate State Agency will compare the applicant's fingerprints to the State Criminal History Records Information (CHRI) and forward the fingerprints to the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC). The FBI will compare the fingerprints to the FBI CHRI and return the results to the appropriate State Agency. The State Agency will then notify the prospective employer that the applicant is either eligible for hiring or advise that the applicant does not meet the State Standards for being a Private Security Officer. The employer will not receive the applicant's CHRI and will not know the details as to why the applicant is not eligible to be a Private Security Officer, other than their CHRI revealed a criminal history. The applicant can contact the State Agency and obtain a copy of their Rap Sheet if they want to know the details, but the employer will not receive the information. Under the Act, the employer does not receive the Rap Sheet information. Therefore, the employer cannot give any information to the applicant except that the State Agency has determined that they are eligible for employment or not ineligible for employment as a private security officer due to a criminal history. If the applicant is not eligible, the employer can advise the applicant how to contact the State Agency to pursue the matter. Applicants and employees will have the same rights to see the information provided by the State to the employer.

Currently, in the State of Illinois, an employer fingerprints an applicant for a security license. Those fingerprints are electronically transmitted to the Illinois State Police (ISP). The ISP compares the fingerprints to the ISP CHRI and notifies the Illinois Depart of Professional Regulations (DPR) as to whether the applicant has a criminal history. If the applicant's record is clear, the DPR posts the word "Clear" next to the applicant's name on the DPR website and indicates that the FBI CHRI check is "Pending". As soon as the information is received from the FBI, it is either posted as "Clear" or "Hit" next to the applicant's name. In order to access the DPR website, the employer must enter the applicant's name and social security number. If clear, the applicant can be hired. If the word "Hit" is posted, the employer is notified by the DPR that the application is "Denied" and the applicant is advised that they are not eligible for license as a Private Security Officer and they may appear on a certain date for a hearing regarding the matter. The hearing is informal and the applicant may bring any information he or she desires that will help clarify the issues, e.g., an FBI CHRI Sheet (Rap Sheet), local court documents that show a different disposition from the official FBI records, etc. If the applicant attends the hearing and is not satisfied with the results, the applicant my request a formal hearing before and Administrative Law Judge (ADJ). If the applicant does not agree with the findings of the ADJ, the applicant may file a lawsuit in Illinois Civil Court.

Question 2.

If a standard application process for a group or industry to access criminal history records were already established and someone like the Attorney General reviewed and approved (or denied the requests), would the security guard industry have benefited (would they be getting these checks done today)?

Answer:
I do not believe that it is possible to construct a "standard" application process that would be uniformly applied to all industries and groups. Each group presents a unique set of facts and conditions that must be evaluated on an individual basis. For example, prior to the tragic events of September 11, the country's attention was not focused on the role of private security personnel as a deterrent to terrorist acts. Consequently, it is entirely conceivable that had the Attorney General been vested with the broad power to grant access to FBI records for the purpose of conducting a criminal background check, requests for such information for security personnel may well have been denied or assigned a low priority because there was no perceived need to perform the kind of verifications that are proposed by S.1743.

The real question is not whether the private security industry would have benefited from a standardized application process but whether, in light of events, there is any reasonable doubt that the private security industry personnel should be subject to background checks without further delay.

In the time that has elapsed since the terrorist attacks, the need for private security has grown exponentially. Likewise, the need to recruit only qualified individuals is of paramount importance to our clients and the public at large. The only sure--but certainly not foolproof--way to determine whether a person has engaged in any type of criminal behavior is to authorize access to the FBI's national crime data bank.

Further, in the event Congress were to enact a broad bill, the actual implementation of legislation prescribing a standardized application process is bound to be delayed. Simply stated, it is unrealistic to expect that the Attorney General's office will be able to move expeditiously to craft regulations covering all possible groups eligible to request a criminal background check on prospective employees. Much time will be lost as the government attempts to adopt processes and procedures governing eligibility and similar issues. In the meantime, essential background checks for employees of critical industries and groups that are on the frontline of our domestic security will not be conducted. That is simply unjustified.

As noted in my prepared testimony, the case is clear for private security personnel to undergo background checks. Security personnel stand guard at some of our most sensitive critical infrastructure sites and installations. Very few other groups hold similar positions of responsibility.

Thus, the focus of the debate is not whether Congress should pass a catch-all bill that encompass all groups but whether Congress can afford to wait to authorize background checks for an industry that is a critical component in the protection of the nation's property and its citizens.

Question 3.

What about uniform or minimum training standards for security officers?

Answer:

ASIS International (ASIS) and the members of the National Association of Security Companies (NASCO), such as Securitas Security Services USA, Inc., have long been proponents of professional standards for private security officers, including uniform or minimum guidelines or standards. In early 2001, ASIS formed a Commission on Guidelines to address specific concerns and issues that will enhance the professionalism of the security industry. The ASIS Guidelines Commission mission is "to advance the practice of security through the development of risk mitigation guidelines within a voluntary, non-proprietary, and consensus-based process utilizing to the fullest extent possible the experience, knowledge, and expertise of ASIS membership and the security industry. ASIS has published a "draft" Private Security Officer Selection and Training Guideline" (the Guideline) which should be finalized by September 2004. The Guideline proposes private security officer selection and training criteria that should be incorporated in each states legislation regarding the private security industry and within the company policies of each company that employs private security officers. A copy of the draft Guideline is attached as an exhibit.

ASIS Commission on Guidelines

Private Security Officer Selection and Training Guideline

The Private Security Officer Selection and Training Guideline was approved as a final draft by the ASIS Commission on Guidelines and made available for public review and comment on October 15, 2003 for a 60-day period. Your comments are welcome. However, to facilitate the receipt of such comments, please remember to use the ASIS Form for Submitting Guideline Comments, which can be found at http://www.asisonline.org/guidelines/guidelinesform.pdf

ASIS INTERNATIONAL

GUIDELINES COMMISSION

ASIS International established the ASIS International Guidelines Commission in early 2001 in response to a concerted need for guidelines regarding security issues in the United States. As the preeminent organization for security professionals worldwide, ASIS has an important role to play in helping the private sector secure its business and critical infrastructure, whether from natural disaster, accidents, or planned actions, such as terrorist attacks, vandalism, etc. ASIS had previously chosen not to promulgate guidelines and standards, but the events of September 11, 2001 brought to the forefront the need for a professional security organization to spearhead an initiative to create advisory provisions. By addressing specific concerns and issues inherent to the security industry, security guidelines will better serve the needs of security professionals by increasing the effectiveness and productivity of security practices and solutions, as well as enhancing the professionalism of the industry.

Mission Statement of the ASIS Guidelines Commission

To advance the practice of security through the development of risk mitigation guidelines within a voluntary, non-proprietary, and consensus-based process utilizing to the fullest extent possible the experience, knowledge, and expertise of ASIS membership and the security industry.

Goals and Objectives

- Assemble and categorize a database of existing security-related guidelines
- Develop methodology for identifying new guideline development projects
- Involve/organize ASIS Councils to support guideline development
- Identify and develop methodology for development, documentation, and acceptance of guidelines
- Develop and sustain alliances with related organizations to benchmark, participate, and support ASIS guideline development
- Produce national consensus-based guidelines in cooperation with other industries and the Security Industry Standards Council

Functions

- Determine/select guidelines for development and assign/approve purpose and scope
- Act as a correlating body to effectively manage and integrate guidelines from various ASIS Councils and security disciplines
- Assignment of Guideline Project Committee(s)
- Approve membership on Guideline Project Committee(s)
- Monitor, revise, and update ASIS' Glossary of Terms
- Review and monitor projects and project guideline development
- Approve final draft guidelines
- Administer appeals
- Select guidelines for submission to the Security Industry Standards Council for accreditation as American National Standards

An ASIS International Guideline

Private Security Officer Selection and Training

I. Title

The Title of this guideline is *The Private Security Officer Selection and Training Guideline*

II. Revision History

Baseline document. No revision history.

III. Commission Members

Sean Ahrens, CPP
Norman Bates
Regis Becker, CPP
Jerry Brennan
Chad Callaghan, CPP
Pamela Collins, Ed.D., CFE
Michael Crane, CPP
Edward Flynn, CFE
F. Mark Geraci, CPP
Lynn Mattice
Basil Steele, CPP
Don Walker, CPP
Timothy Walsh, CPP

IV. Keywords

Private Security, Selection Criteria, Training Criteria

V. Guidelines Designation

Tentative ASIS GLCO 02 122003

VI. Scope

ASIS International has long been a proponent of professional standards for private security officers, including participation in the Law Enforcement Assistance Administration National Advisory Committee on Criminal Justice Standards and Goals in 1976.

This guideline has been written for both proprietary and contract security but is not intended to cover all aspects of selection and training criteria for private security officers. It is intended to set forth minimum criteria that regulating bodies and companies in the United States can use to assist in recommending legislation and policies for the selection and training of private security officers.

VII. Summary of Guideline

The Private Security Officer Selection and Training Guideline offers minimum criteria for selection and training of all private security officers, and includes definitions of terms, illustrative material, and references/bibliography.

VIII. Purpose

The purpose of the Private Security Officer Selection and Training Guideline is to improve the performance of private security officers and thus the quality of services they provide. This guideline is also intended to provide the regulating bodies in the United States with consistent minimum qualifications that every private security officer should meet.

IX. Terminology

Background Investigation

An inquiry into the background of an individual under consideration for employment, credit, access to sensitive assets (such as national defense information), and other reasons. A background investigation can vary widely, from merely checking prior employment experience and educational credentials to civil, criminal, and medical.

Computer Based Training

Any training that uses a computer as the focal point of instructional delivery. Training is provided through the use of computer hardware and software that guides the learner through an interactive learning program.

Contract Security Service

Protective services provided by one entity, specializing in such services, to another entity on a compensated basis.

Criteria

A standard on which a judgment may be based.

Critical Infrastructures

The sophisticated facilities, systems, and functions, which include human assets and physical and cyber systems, that work together in processes that are highly interdependent to provide the foundation for our national security, governance, economic vitality, and way of life.

Domestic Security
The federal government's efforts, in coordination with state and local governments and the private sector, to develop, coordinate, fund and implement the programs and policies necessary to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.

Electronic Medium Based Training
Any training that uses an electronic technology as a method of effectively conveying instruction and / or information. Electronic technology includes but is not limited to video or audiocassettes and video conferencing.

Nolo Contendere
Latin, meaning "I will not contest it." The name of a plea in a criminal action, having the same legal effect as a plea of guilty, so far as regards all proceedings on the indictment, and on which the defendant may be sentenced.

Private Security
An independent or proprietary commercial organization whose activities include employee clearance investigations, maintaining the security of persons or property, performing the functions of detection and investigation of crime and criminals, and apprehension of offenders for reward, fee, or benefit.

Private Security Officer
An individual other than an employee of a federal, state, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes; but does not include employees whose primary duties are internal audit or credit functions, technicians or monitors of electronic security systems, or employees whose duties primarily involve the secure movement of prisoners.

Proprietary Security
Any organization, or department of that organization, that provides full time security officers solely for itself.

Regulatory Body
Any state board, commission, department, or office, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect the interests of identified persons.

Selection

The act or process of choosing individuals who possess certain characteristics or qualities.

Threat

An intent of damage or injury; an indication of something impending.

Training

The act, method, or process of instruction, discipline, or drill; to teach so as to make fit, qualified, or proficient.

X. Recommended Practice Advisory

Regulation of Private Security

Private security officer selection and training criteria vary from state to state ranging from comprehensive training requirements for every private security officer to little or no training at all. One of the main goals of the Private Security Officer Selection and Training Guideline is to develop a minimum national standard for the selection and training of all private security officers, be they proprietary or contract.

The development of such a minimum standard has become essential for enabling the private security industry to meet the need of providing effective security to its clients as well as meeting the demands associated with new homeland security initiatives. Effective security today requires workers who are familiar with all aspects of a facility's security system for assessing and containing potential threats. Security officers must be well versed in emergency procedures and be able to work with an organization to ensure that emergency procedures can be implemented successfully. They must also be able to work closely and effectively with public safety personnel.

According to objective market studies and statistics cited by the U.S. Department of Labor, the selection of private security officers in the United States is growing rapidly. This industry sector has an important role to play in assisting law enforcement in reducing and preventing crime, especially in the wake of the terrorism of September 11, 2001.

The ability of U.S. companies to protect the nation's critical infrastructure and contribute to homeland security efforts depends largely on the competence of private security officers. Therefore, private security officers and applicants for private security officer positions should be thoroughly screened and trained and guidelines must be used for the selection and training of qualified security officers.

In order to obtain effective private security officers, minimum criteria should be established through the formation of guidelines for selection and training. The following tables demonstrate the necessary steps to be taken by regulating bodies and companies in the U.S. towards the development of such guidelines, beginning with the effective regulation of licensing and enforcement. Recognizing that each regulating body's licensing laws are different, elements listed in Table 1: State Regulation of Private Security should be considered necessary for private security officer legislation and, to the extent possible, every regulating body should cooperate to mandate consistent state-to-state requirements.

Table 1: State Regulation of Private Security

Subject	Recommendations
Regulatory Body or Company Registration	Establish a requirement for licensees-in-charge/qualifying agents (e.g., education, experience, written exam).
Security Officers	Establish a requirement for registration/licensure of all security officers, including proprietary security officers.
Regulatory Body Oversight/Enforcement	Establish a regulatory body, operating under the direction and within the framework of a state agency. The agency should determine the qualifications for membership, method of appointment and responsibility/authority of the body.
Background Investigations	Establish a requirement that all candidates must successfully pass a background investigation prior to assignment as a security officer. Inquiry shall be conducted to determine if the applicant has been adjudicated as incompetent or committed to a mental institution.
Pre-assignment, Post-assignment and Annual Training	Establish requirements for private security officer training (orientation/pre-assignment; on-the-job; ongoing/refresher/annual courses).
Armed Security Officer Training	Establish additional training requirements for armed security officer training (classroom, range safety, course-of-fire, re-certification policy, instructor qualifications).
Continuing Education	Establish requirements for continuing education credits for licensees-in-charge of the security agency.
Individual Security Officer License	Establish requirement for regulating bodies to issue private security officer registrations/licenses, which should include a photograph and other relevant identification information.
Insurance	Establish minimum requirements for agency/licensee-in-charge liability insurance, e.g., minimum of $1,000,000 per occurrence.

State Fees to Support Enforcement Process	Establish fees commensurate with the effort necessary to process applications for registration/licensure/renewal to be used by the regulating body to manage the department and enforce the regulations. Enforcement should include administrative fines for violations of the state statute and the implementation of regulations, sanctions, and criminal violations in certain instances.
State Law to Pre-Empt Local Laws	The state law pre-empts city, municipal or county ordinances/laws.

Selection Criteria

The next goal of this guideline, as demonstrated in Table 2: Selection Criteria, is to provide a framework for private security officer job descriptions and minimum criteria to be utilized in the selection of private security officers. Private security officers must still comply with the applicable statutory requirements of their respective regulating bodies as well as any established criteria of the employer, which may exceed the minimum requirements as set forth in this guideline.

Table 2: Selection Criteria

Subject	Recommendations
General Requirements	Establish a requirement that candidates must be of at least 18 years of age for unarmed security and 21 years of age for armed security, with provisions that the candidate must be able to perform the duties required of the position.
Criminal History	Establish a requirement that candidates must not have been convicted of or pled guilty or nolo contendere to a felony or job related crime immediately preceding a minimum seven-year period or longer.
Education	Establish a requirement that candidates must possess a high school diploma, GED or equivalent. Also, the applicant should demonstrate an ability to read, write, and speak English and the language most appropriate to his or her assigned duties.
Citizenship	Establish a requirement that candidates must be a United States or naturalized citizen or non-citizen eligible under law for employment in the U.S.
Fingerprints	Establish a requirement for a candidate's submission of a fingerprint card or electronic fingerprint to be processed for a criminal history check.
Photographs	Establish a requirement that candidates must submit two recent (within the past 30 days) passport size photographs for purposes of identification and licensing.
Personal Information	Establish a requirement for candidates to submit their current and previous work and residential addresses and phone numbers for at least the last seven years.

Employment Verification	Establish a requirement for verification of a candidate's prior employment history for at least the last seven years.
Drug Screening	Establish a requirement that candidates must successfully pass a pre-selection drug screen.
Registrations/Licenses and Certifications	Establish a process for verification of the regulating body's required security officer registrations/licenses and any listed certifications and registrations/licenses.
Social Security Number	Establish a process of verification of an applicant's name and social security number.

Training Criteria

In addition to providing the framework for effectively selecting private security officers, this guideline provides an outline for the design and delivery of private security officer training by employers and other agencies. The ASIS Commission on guidelines calls for a formal mechanism to establish minimum training requirements certified by a regulatory body in each of the 50 states. Although the regulating bodies should mandate the minimum training requirements, there should be cooperative efforts by these regulating bodies to mandate consistent requirements state-to-state. All entities or persons providing security officer training should also be certified by a regulatory body.

The following elements listed in Table 3: Training Criteria are the proposed training requirements considered essential for each regulating body and subsequent proprietary or contract security agency to consider in the training of their private security officers. While it is difficult to address a minimum number of hours to be required due to the various modes of instructional delivery, for example, 16 hours of classroom training may only take an officer 6 hours by Computer Based Training (CBT), this guideline prescribes specific recommended hours of training and offers different ways in which a security officer may receive this training or demonstrate proficiency to perform the duties of a private security officer. It is further recommended that all training be accompanied by an appropriate assessment and evaluation to measure the security officer's knowledge of the training subject. Further, testing should be appropriate to subject matter, that is, written or performance.

Table 3: Training Criteria	
Subject	**Recommendations**
Training	Establish a requirement that each private security officer shall receive 48 hours of training in the first 100 days, of which: 8 are pre-assignment 16 are post-assignment 24 are additional post-assignment
Training Topics	Establish a requirement that each private security officer should pass written examination to demonstrate that he/she understands the subject matter and is qualified to perform the basic duties of a private security officer. Training should include the following material: 1. Assignment or post orders 2. Blood borne pathogens 3. Bomb threats 4. Communications 5. Company orientation and policies 6. CPR 7. Crowd control 8. Customer service and public relations 9. Diversity in the workplace 10. Emergency response procedures 11. Ethics, honesty, professional image and proper conduct 12. Fire prevention and control 13. Fire equipment 14. First Aid 15. Harassment and discrimination 16. Information security 17. Laws of evidence 18. Legal aspects of security 19. Lock and key control 20. Nature and role of private security 21. Note-taking/report writing 22. Patrol techniques and observing unusual circumstances 23. Physical security and access control 24. Preserving the incident scene 25. Safety awareness 26. Security awareness 27. Substance abuse 28. Technology in security 29. Testimony 30. Theft prevention 31. Traffic control and parking lot security 32. Urban terrorism 33. Use of force and force continuum 34. Workplace violence
Annual Training	Recommend annual training. The training may consist of on the job training, classroom training, CBT or other forms of electronic medium based training. The type of training should be determined

	by such factors as the type of facility where the security officer is assigned, the duties of the security officer, the value of the assets being protected, the level of security risks, the threats, vulnerabilities and criticality of the assignment.
Pre-Assignment Firearms Training	Establish a requirement for minimum range and classroom training taught and administered by a state certified firearms instructor, or approved current law enforcement or military firearms certification should be followed. The applicant shall provide any prior information regarding the suspension or revocation of any firearms certification or licensee they may have held.
Post-Assignment Firearms Requirements	Establish a requirement for security officers and security agencies to notify the appropriate regulatory body of any discharge of a firearm in the course of the officer's duties. The incident report should contain an explanation describing the nature of the incident, the necessity for using the firearm and a copy of any report prepared by a law enforcement office. Additional firearms training may be required by the state agency.
Annual Firearms Training	Recommend that state mandated annual firearms training should be followed.

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PREPARED STATEMENT OF IRA A. LIPMAN

STATEMENT OF IRA A. LIPMAN
FOUNDER AND CHAIRMAN, GUARDSMARK, LLC
ON S. 1743
PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2003
BEFORE THE SUBCOMMITTEE ON CRIME
OF THE HOUSE JUDICIARY COMMITTEE
MARCH 30, 2004

Chairman Coble, Ranking Member Scott, and Members of the Subcommittee, thank you for this opportunity to express our strongest support for S. 1743, the Private Security Officer Employment Authorization Act of 2003.

Guardsmark is one of the world's largest U.S.-owned security services companies. We employ approximately 18,000 people and have over 145 branch offices serving clients in 400 cities across North America. Under the leadership of Founder and Chairman, Ira A. Lipman since 1963, Guardsmark has stood for sustained excellence in security services, and for decades we have led efforts to enact legislation to provide private security companies access to the FBI criminal history database in order to eliminate a dangerous vulnerability -- the employment of unscreened private security officers.

This bill, which passed the United States Senate by unanimous consent, is urgently needed to improve our national security and homeland defense and should be enacted without delay. As the recent FBI terrorist advisory to Texas oil refineries confirms, all aspects of U.S. critical infrastructure are potential terrorist targets. This legislation will vastly improve our ability to deter such attacks and make our country a safer place.

The National Security Problem.

One of the principal recommendations of the U.S. Commission on National Security (best known as the "Hart-Rudman Commission") was that Congress should encourage the sharing of threat, vulnerability and incident data between the public and private sectors, particularly as applied to "threats to critical infrastructures."[1] "Critical infrastructures" were defined in Presidential Decision Directive 63 as energy, telecommunications, banking and finance, transportation, water systems, and public and private emergency services. These critical infrastructures have been viewed as vital to U.S. national security since the end of the Cold War, particularly given that "most of these systems are interrelated and a failure in one would likely have impacts on other systems."[2]

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[1] U.S. Commission on National Security/21st Century. Phase III Report, February 15, 2001, at 18 and 27 (fn. 21).
[2] U.S. Commission on National Security/21st Century. National Security Study Group Report, April 15, 2001, at 45.

S. 1743 recognizes that "many of these systems are owned and managed by the private sector, and thus it is beyond the capacity of the federal government alone to protect them. Should one or more critical infrastructures fail, the effects could impede traditional national security functions as well as economic prosperity, thus affecting both national military and economic power."[3] In fact, most of these critical infrastructure components are protected primarily by private security officers employed by companies providing security services. The legislation supports the Commission's observations, and states that "the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions."[4]

If we are to make our nation more secure, and if we are to make good on our promise that Americans should feel safe in their homes and communities, this legislation should be promptly enacted.

The Criminal Records Problem

As an adjunct to our Nation's law enforcement officers, approximately 13,000 private security companies in the United States employ about 1.5 million persons nationwide. Given the critical nature of the facilities private security officers are hired to protect, it is imperative that we provide sufficient access to information that might determine who is unsuitable for protecting these resources.

Currently we do not. Relying upon a Federal bill passed in the early 1970's, Public Law 92-544 (Oct. 25, 1972), 37 States and the District of Columbia have passed legislation authorizing State agencies to request both State and Federal criminal history record searches for prospective employees in the private security industry. Despite this authorization, searches of both State and Federal criminal history databases for private security officers are the exception rather than the rule. That is because only 20 States plus the District of Columbia regularly access the Federal database for private security officers, and only California does so in a way that ensures a timely response. In many jurisdictions with authorizing statutes, reviews of the Federal database are conducted sporadically, if at all. Indeed, in approximately 17 of the 37 States with authorizing statutes, typically only State databases are searched for private security officers. An additional 13 States have not even passed legislation providing for any form of Federal criminal background check.

What that means is that in approximately 30 States neither the State agencies nor the private security employers typically have any access to any Federal criminal database information. In these 30 States, an employment applicant in one State could have a serious criminal conviction in another State and still be permitted to perform sensitive security work. The State reviewing the applicant would have no idea a conviction in another State existed without access to the Federal database. At Guardsmark, we engage in an extensive review of a person's background before employing him or her.

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[3] Id.

[4] S. 1743, 108th Cong., 1st Sess.; Section 2(5).

Nonetheless, without prompt, pre-employment access to a person's criminal record in all 50 States, all the resources available to assure that a prospective private security officer does not pose a threat to national security, or to the persons whom he or she is intended to protect, are untapped.

Further, even in those few States that actually conduct Federal records searches, the search process on new employees often takes 90 to 120 days, if not longer. While checks are pending, security guards frequently are provided temporary licenses. This 90 to 120 day period gives immediate access to a guard with a temporary license to engage in serious criminal or terrorist acts against vital infrastructure targets. In light of our urgent need to strengthen the security of our homeland, this lack of timely access to criminal history information is unacceptable. An article that appeared in 2003 in *USA Today* entitled Private Security Guards Are Homeland's Weak Link got it right when it said, "more often than not, private security guards who protect millions of lives and billions of dollars in real estate offer a false sense of security." We strongly encourage Congress to act now in order to make it easier for States and employers to gain timely access to this crucial criminal history information.

The Senate-Passed Legislation

S. 1743 is the product of extensive discussions with the FBI and the Justice Department and careful attention to the employment rights of current and potential employees in the private security industry.

First, the bill permits private security employers to request a prompt search of the FBI criminal history database for prospective or existing employees. Requests must be made by the employers through their State's identification bureau or similar State agency designated by the Attorney General. Employers will not be granted direct access to the FBI records. Instead, States will serve as intermediaries between employers and the FBI to: (1) ensure that employment determinations are made pursuant to applicable State law; (2) prevent disclosure of the raw FBI criminal history information to the employers and the public; and (3) minimize the FBI's administrative burden of having to respond to background check requests from countless private sources.

Importantly, this program will not cost the Federal Government or the U.S. taxpayer anything. The legislation allows the FBI, and States if they so choose, to charge reasonable fees to security firms to recover their costs of carrying out this act.

Second, the bill protects employee and prospective employee privacy. Before an FBI background check can be conducted, the employee or applicant for employment must grant an employer written consent to request the FBI database search. In addition, the criminal history reports received by the States will not be disseminated to employers. Instead, in States that have standards regulating private security guard employment, designated State agencies will simply be required to use the information provided by the FBI in applying their State standards. For those States that have no standards, the States will be instructed to inform requesting employers whether or not employees or applicants have been convicted of either: (1) a felony; (2) a violent misdemeanor within the past ten

years; (3) a crime of dishonesty within the past ten years, or (4) a felony charge that has been pending for 365 days or less.

Thus, in these situations, only the fact that a particular conviction or recent arrest exists -- or not -- will be provided by States to employers, and the privacy of the FBI records themselves will be maintained. All information provided to employers pursuant to this act must be provided to the employees or prospective employees. Furthermore, the bill confirms present criminal penalties and establishes new criminal penalties for those who might falsely certify they are authorized security firms or otherwise use information obtained pursuant to this act beyond the act's intended purposes.

Third, the bill protects States' interests. The bill does not impose an unfunded mandate on the States. It reserves the right of States to charge reasonable fees to employers for their costs in administering this act. Moreover, if a State wishes to opt out of this statutory regime, it may do so at any time through the executive act of a Governor, without the requirement of action by a State legislature. The Congressional Research Service determined that this "opt-out" provision is fully consistent with recent interpretations of the 10th Amendment by the U.S. Supreme Court.

Senate Action on S. 1743

S. 1743 was originally introduced as S. 769 by Senators Levin, McConnell, Lieberman, Alexander and Schumer. This bipartisan legislation was the result of months of study and consultations with State government representatives, the FBI, constitutional law experts, and extensive review of work-place rights literature. In September of 2003, after receiving the formal views of the Department of Justice on the legislation, additional changes were made to satisfy the remaining concerns of the FBI and the Justice Department. The revised bill was reintroduced as S. 1743 on October 16, 2003, considered by the Senate Judiciary Committee on October 23, 2003 and favorably reported to the full Senate without amendment by voice vote. On November 17, 2003, the full Senate considered the legislation and passed it by unanimous consent. The Senate bill now rests in the House Judiciary Committee and House Education and Workforce Committee.

Comments On Other Testimony

Guardsmark has reviewed the testimony of the other witnesses before the subcommittee on S. 1743 and respectfully suggests that the bill be passed promptly and sent to the President. Guardsmark believes that no amendment of S. 1743 is required, for the following reasons.

1. *Access to Other Industries*. Guardsmark believes that District Attorney Pirro makes a sincere and heart-felt call for broadening the legislation to allow the Attorney General to provide access to other employers, including non-federal employers of persons who come into direct contact with children. Such an initiative will require thoughtful consideration and consultation with many interested parties. This is typically a time-consuming process. While such legislation certainly can and should proceed on a

separate track, we conclude that there are compelling national security and homeland security reasons for passing S. 1743 ***now*** without the delays that would be inherent in adding an amendment that would provide other employers with the opportunity to access the FBI CJIS database.

S. 1743 should be passed now, without further amendment, because a number of experts, including the "Hart-Rudman Commission," have recognized that private security officers guard much of the "critical infrastructure" that are prime terrorist targets. As the recent train bombing in Madrid and the recent FBI terrorist warning to oil refineries in Texas illustrate, the time for action to protect U.S. critical infrastructure is now. We attach a recent letter from Commission Co-Chair Warren Rudman, which makes this point in detail.

2. *Testimony of National Workrights Institute.* Testimony from this organization suggests two amendments to S. 1743: (1) narrowing of the definition of disqualifying offenses involving "dishonesty" or "physical force," and (2) narrowing of the definition of "security officer."

Crime Definition. Guardsmark believes that the concerns about the breadth of the "dishonesty" and "physical force" crimes are overstated and that S. 1743 does not need to be amended. It is important to note that, except in the 10 States that do not regulate private security companies, S. 1743 would not change the applicable State law that controls the hiring of such individuals. The definitions referred to by Mr. Lewis Maltby of the National Workrights Institute are not applicable whatsoever in approximately 40 States.

In the 10 States where the language of section 4(a)(4)(B)(i)(I) applies, it should be noted that offenses involving dishonesty or use of physical force only become an issue if the conviction occurred in the previous ten years – a "statute of limitations" concept that Mr. Maltby supports elsewhere in his testimony. In the event that a truly "minor" offense falls within the language of this section, most States have procedures by which such convictions may be "expunged" from the record books. In other words, Mr. Maltby's examples of "irrelevant" convictions are typical of those crimes for which States provide the option of expungement. That process should be used in the unlikely event that a qualified security-guard applicant has an "irrelevant" criminal conviction. For all other instances, it is proper and logical to bar someone from security-guard employment if they have been convicted of offenses involving dishonesty or the illegal use of physical force during the previous ten years.

Security Officer Definition. There should be no concern about the definition of "security officer" because S. 1743 would not permit employers to submit parking lot attendants or coat-check persons to a criminal history review. Section 3(2) of the bill only permits an employment authorization procedure to be initiated by an "authorized employer." That term clearly states that an "authorized employer" "employs private security officers" and is one which is "authorized in regulations by the Attorney General" to request a criminal history records search under the bill. The Attorney General has complete regulatory authority to avoid the results posed by Mr. Maltby.

3. *Letter from the ACLU.* In a letter to Chairman Coble and Ranking Member Scott dated March 30, 2004, the ACLU proposes two amendments to S. 1743: (1) arrest records should not be included in the criminal history records provided through the State agencies to employers; and (2) prohibit the subsequent use of fingerprints for applicants who have no criminal record and are not employed as private security officers.

Arrest Records. Guardsmark agrees that arrest records *per se* should not be included, and that in many cases persons arrested for a crime are never convicted. S. 1743 has a much narrower provision. In the ten States (only) that do not regulate private security companies, S. 1743 would allow transmission of an arrest record from the FBI to the State entity if the employment applicant in question: (1) was charged with a criminal felony, and (2) the charge occurred within the previous year. The addition of "criminal felony charges" was a suggestion of the Department of Justice in its September 9, 2003 views letter to the Senate Judiciary Committee. DOJ asserted that, when it came to felonies, there was good cause to alert private security companies to such charges. The sponsors of S. 1743 modified this request to limit the felony charges to those pending for less than one year, in order to avoid stale arrests that may not have been removed from the CJIS database. We believe the appropriate balance has been achieved in this provision and that no further change is in order.

Subsequent Use of Fingerprints. Guardsmark has no argument with the notion that fingerprint records submitted by private security officer employment applicants who ultimately do not commence employment in this industry should not subsequently be used for improper purposes. The FBI has informed us, however, that such records submitted under this and similar statutes are returned to the contributing agency. The FBI thus does not possess the record and cannot subsequently misuse it.

In addition, we do not see a potential for misuse, given the clear current statutory guidelines provided to the FBI and the Attorney General. Under 28 USC 534(a), the Attorney General may only acquire, preserve and exchange identification records and information: (1) for criminal identification, (2) to assist in the identification of any deceased individual who has yet to be identified, and (3) to assist in the location and identification of any missing person. This statute's direction is clear and it has been on the books for a long period of time. Guardsmark believes these three purposes are laudable. If the Committee desires, it could reiterate ***in legislative history*** that the limitations on subsequent use of the fingerprints is controlled by 28 USC 534(a). There is no need to amend S. 1743, however, to restate that which already exists elsewhere in the U.S. Code.

Guardsmark's 24-Year Legislative Effort

Guardsmark is not a recent convert to the effort to improve the security guard industry. Its views are the result of many years of working both inside and outside the industry to raise the quality of private security officers. The company has tracked crimes committed by private security guards for the past 28 years. It has been seeking legislation to improve the industry for 24 years.

Guardsmark has been acclaimed by security experts as the premier company in our field, and we have been highlighted by *TIME* and other national news magazines, the broadcast media, and numerous books and publications for the quality of our service. For years we have led the fight to improve standards in the private security industry, making our argument in speeches, lectures, articles, and in State capitals coast to coast. We have previously testified before Congress to the need for this type of legislation. As the following chronology indicates, Guardsmark has been taking concrete steps to advance legislation such as S. 1743 for 24 years.

November 23, 1980 – Guardsmark Founder and Chairman, Ira A. Lipman authors op-ed piece in *The New York Times* calling for stricter standards for armed security officers, including enhanced training, polygraph examinations and the use of the MMPI psychological evaluation. Active in the field of security services since 1960, Mr. Lipman urges the security services industry to adopt meaningful standards to ensure public safety.

December 21, 1981 – *The New York Times* features an article about the industry-leading efforts of Ira A. Lipman and Guardsmark in reducing the number of armed security officers, even at the expense of foregoing approximately $1 million in business.

January 9, 1982 – *The New York Times* editorially praises Ira A. Lipman and Guardsmark for leadership in reducing the number of armed guards.

June 25, 1986 – Guardsmark takes the lead in supporting an exclusion for security companies under the Polygraph Protection Act (S.1815). This exclusion permits security companies to conduct polygraph tests of conditional employees that would otherwise be prohibited by the Act.

April 26, 1988 – Ira A. Lipman calls for access to FBI criminal history records for private security companies during the Alden Miller Lecture that he delivers to the Institute of Criminal Justice and Criminology of the University of Maryland.

June 27, 1988 – Polygraph Protection Act is enacted by Congress. At Guardsmark's urging, the Act, as amended, contains a special exemption for security service companies allowing them to polygraph employees and prospective employees when permitted under State law.

1989 – Ira A. Lipman testifies before the New York State Senate seeking higher standards for private security officers.

April 4, 1990 – Ira A. Lipman and a team of Guardsmark executives meet with Senator Albert Gore (D-TN) and his staff to discuss and draft specific provisions for a bill to establish meaningful federal standards for the employment, background screening and training of private security officers.

August 1990 – Ira A. Lipman appears on NBC's *TODAY* show urging the public to support higher standards for security officers.

June 11, 1991 – On this date, Senator Gore introduces S. 1258 (the "Gore Bill"). Guardsmark, which has provided extensive assistance in the research, preparation and drafting of the bill, champions this legislation in the security services industry and to the public. The Gore Bill is the first national attempt to establish meaningful standards for regulating security officers. It includes provisions such as: mandatory criminal background checks; mandatory submission of fingerprints to the FBI; psychological evaluation; physical fitness evaluation; mandatory training of security officers; employment history verification; mandatory first aid training; credit checks and mandatory U.S. citizenship (or proof of an intent to become a U.S. citizen). The Gore Bill is still pending when Senator Gore is selected to become the Democratic Party nominee for Vice President. The bill is not reported out of the Senate Judiciary Committee, and it expires at the end of the Congressional session.

March 9, 1992 – *TIME* Magazine publishes a landmark article about deficiencies in the security industry. The article includes a feature about Guardsmark Chairman and President Ira A. Lipman and singles out Guardsmark as the security company that insists upon higher standards for security officers.

September 8, 1992 – Representative Matthew Martinez (D-CA) introduces the "Martinez Bill" (H.R. 1534. The Martinez Bill, which is non-binding, provided for access to FBI criminal history records, but individual States would not be required to participate. Moreover, the bill discusses minimal standards for security officers, but the standards are too low and are not mandatory. (S.1743 has an "opt-out" regime, by comparison.)

June 1993 – Ira A. Lipman testifies before the U.S. House of Representatives subcommittee that is considering the Martinez Bill. Mr. Lipman criticizes and opposes the bill because it does not adopt binding and meaningful standards to improve the quality of security officers.

July 1993 – Guardsmark participates in drafting and champions the "Sundquist Bill" (H.R. 2656) introduced by Representative Don Sundquist (R-TN). In addition to calling for access by private security companies to FBI criminal history records, the Sundquist Bill mandates the adoption of even stricter standards than the original Gore Bill. The Sundquist Bill ultimately fails to be reported out of the House Judiciary Committee.

March 1994 – ABC's *20/20* features Guardsmark and Ira A. Lipman for fighting for higher standards in the security industry.

September 1994 – CNBC *Market Watch* interviews Ira A. Lipman about the need for federal regulation of the security industry.

October 1994 – CNN *Moneyline* interviews Ira A. Lipman. He calls for stricter standards for private security officers.

July 1995 – Representatives Bob Barr (R-GA) and Matthew Martinez (D-CA) introduce the "Barr-Martinez Bill" (H.R. 2092). The Barr-Martinez Bill is virtually the same as the previous Martinez Bill, with the same omissions and shortcomings. The bill ultimately dies in the committee hearing process.

1996-1997 – Guardsmark executives meet with Representative Ed Bryant (R-TN) and Senate Judiciary Committee staff in Washington, D.C. to discuss inadequacy of Barr-Martinez Bill and necessary amendments. Cong. Bryant eventually introduces legislation that substantially improves on Barr-Martinez.

January 1997 – Representative Bob Barr (R-GA) and Representative Matthew Martinez (D-CA) re-introduce the "Barr-Martinez Bill" (H.R. 103). In addition to its previous shortcomings, this version of the Barr-Martinez Bill contains no mandatory provisions; rather, it is non-binding, and merely states a "sense of the Congress."

July 1997 – Guardsmark participates in the drafting and strongly supports the introduction of the "Bryant Bill" (H.R. 2184 sponsored by Representative Ed Bryant (R-TN)). The Bryant Bill concentrates primarily upon allowing private security companies to have access to FBI criminal history records. Unlike the Barr-Martinez Bill, which was not mandatory and would allow (but not compel) access to FBI criminal history records, the Bryant Bill is mandatory and would give private security companies the right to such information. Additionally, the Bryant Bill called for a "user fee" to be paid by private security companies seeking to access the information, thus eliminating any expense to the public and requiring no federal appropriation of funds.

July 28, 1997 – The Barr-Martinez Bill passes in the U.S. House of Representatives and is sent to the Senate.

October 1998 – The Barr-Martinez bill and its Senate companion die in the U.S. Senate.

February 1999 – Barr Bill (H.R. 60) reintroduced. House bill dies at end of session and is never reintroduced.

September 2001 – Following the tragic events of the terrorist attacks of September 11, 2001, Guardsmark undertakes renewed and urgent efforts to enact federal legislation providing for private security companies to have access to FBI criminal history records. Guardsmark immediately begins working with outside legal counsel and with bipartisan group of Senators to respond to this urgent need.

April 2002 – Guardsmark participates in drafting the Private Security Officers Employment Standards Act of 2002, also known as the "Levin-McConnell Bill" (S. 2238). The bill is jointly introduced by a broad bi-partisan coalition of senators, including Senator Carl Levin (D-MI), Senator Mitch McConnell (R-KY), Senator Joseph Lieberman (D-CT), and Senator Fred Thompson (R-TN). The bill is aimed solely at obtaining access to FBI criminal history records for private security companies. It

provides for user fees so that no public funds would be expended. It also has safeguards for individual privacy rights.

April 2002 – November 2002 – Guardsmark campaigns among all critical agencies and organizations in order to obtain broad bipartisan support for S. 2238. Although no group, organization or individuals express opposition to the Levin-McConnell Bill, it fails to be enacted due to a conflict between the Senate Judiciary Committee and the Senate Appropriations Committee over user-fee language.

April 2003 – Guardsmark works in support of the re-introduction of the Levin McConnell Bill (S. 769, later amended and re-introduced as S. 1743). In addition to Senators Levin, McConnell and Lieberman, Senator Lamar Alexander (R-TN) joins as a co-sponsor of the bill (having succeeded retired Senator Fred Thompson, previous sponsor of the bill) as does Senator Charles Schumer (D-NY). The bill is virtually identical to the prior Levin-McConnell Bill, and quickly receives the endorsement of the same organizations.

October 23, 2003 – The Senate Judiciary Committee approves and reports out the Levin-McConnell Bill on a voice vote without opposition. It is recorded as being approved 19-0. The bill is sent to the Senate floor for final approval.

November 17, 2003 – The Levin-McConnell Bill (S. 1743) passes the Senate by unanimous consent. It is referred to the U.S. House of Representatives Committee on the Judiciary and the Education and the Workforce Committee.

Conclusion.

Mr. Chairman, Ranking Member Scott, and Members of the Subcommittee, we thank you for your attention to this important issue. For the reasons just described, we urge you to pass S. 1743 as promptly as possible, without amendment, and allow the President to sign legislation that will significantly improve our national security and homeland defense.

PREPARED STATEMENT OF WILLIAM C. WHITMORE, JR.

STATEMENT OF

WILLIAM C. WHITMORE, JR.

PRESIDENT AND CHIEF EXECUTIVE OFFICER

ALLIED SECURITY, LLC

MARCH 30, 2004

UNITED STATES HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

INTRODUCTION

Chairman Coble, Ranking Member Scott, and Members of the Subcommittee, I am William C. Whitmore, Jr., President and Chief Executive Officer for Allied Security, LLC of King of Prussia, Pennsylvania. Allied Security is the largest independently held contract security officer company in the United States, serving more than 100 of the Fortune 500 companies, and has more than 20,000 employees nationwide. We are a quality driven company, providing quality security based on client specifications and a pledge of partnership, commitment, and continuous improvement. We are fortunate to enjoy a broad client base with varying needs, security issues, and exposure challenges. For example, Allied Security's officers help to protect high-rise office buildings, power generating facilities, sporting arenas, pharmaceutical processing facilities, hospitals, and convention centers.

Thank you for the opportunity to offer testimony in order to discuss Allied Security's strong support for federal legislation that strengthens the nation's ability to protect key assets and

the life, health, and property of its populace by granting providers of private security services access to relevant, but limited, criminal history records.

The present system for the processing of private security officer background check requests is disjointed, cumbersome, and, given modern technologies, badly antiquated. It's a 50 state "hodge-podge" of varying rules, standards, and processes. Some states are responding well to the new security challenges in the post-9/11 private security officer environment. Others, unfortunately, are not. The potential consequences, moreover, are too great to ignore.

Consider, for example, the fact that under the present system for processing private security officer background checks, it is possible and lawful for a private security officer to be placed "on the job" pending the results of a state-background check, which can takes weeks or even months. Other states provide screening results that disclose the criminal history records in that state only. Incredibly, a few states require no background checks on private security officers whatsoever.

It is not hard to see why the status quo represents a grave and growing danger. The question is no longer "if this weakness will be exploited," but is instead "how bad could it get if Congress does not act?" This Committee is wisely responding to this significant new challenge, and Allied Security welcomes the opportunity to offer the benefit of our experience in crafting an effective and responsive new strategy for processing nongovernmental background check requests.

It is my understanding that the Committee is currently reviewing two legislative proposals, each of which is aimed at ensuring that private security officers and applicants for private security officer positions be thoroughly screened. Both bills represent a potential positive

step forward for our industry and for public safety; however, the House bill, sponsored by Representatives Jim Saxton (R-NJ) and Rob Andrews (D-NJ), is more effective and a better solution to the problem the Committee is seeking to address.

THE SENATE BILL (S. 1743)

The Senate-passed bill ("S. 1743"), authored by Senator Carl Levin (D-MI), permits an authorized employer of private security officers to submit to a participating State's identification bureau fingerprints of an employee for purposes of a criminal history record information search. Under the S. 1743 approach, the State's identification bureau acts as a conduit between the employer and the Attorney General, who is directed to search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation ("FBI") and to provide any resulting identification and criminal history information. Importantly, S. 1743 also authorizes a State to decline to participate in this new background check system. As explained below, the opt-out provision dilutes much of the real impact of the legislation as evidenced by the fact that many states currently have no background screening process in place and, unfortunately, are unlikely to dedicate their limited available resources to create the necessary infrastructure.

S. 1743 is well-intentioned and reflects clear support for improving upon the current system of background checks in the private security industry. Good intentions aside, however, S. 1743 is, in practical terms, largely symbolic, nipping at the edge of the problem, and resulting in little (if any) real change. Let me outline the two fundamental problems in S. 1743.

First, S. 1743's continued reliance on state agencies to perform the screening function disregards the public policy in reforming the present state-based system so that a comprehensive

national background check can be performed, resulting in the dissemination of accurate and timely data to the employing entity. By relying on the state systems, we end up with a mish-mash of different standards and practices, some of which work better than others, and with varying degrees of timeliness. A national background check process, on the other hand, is workable, affordable, and represents the only effective response to the public's interest in having every private security officer in the country subject to an "all inclusive" background screening.

It is important to note that this concern is not an indictment on any State's licensing or regulatory authorities or practices. We at Allied Security have terrific working relationships throughout each and every State jurisdiction in which we do business and we sincerely value and respect the services provided by these State agencies and authorities. On the issue of background checks, however, we believe that a streamlined system taking advantage of the nationwide resources of the federal government makes more sense for everyone – including the private security industry and its clients, the federal government, State governments, and (most importantly) the public at large.

Second, section 4(e) of S. 1743 provides that "a State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor … providing that the State is declining to participate." This opt-out provision removes all of the "teeth" in S. 1743, as there are several States that do not have the financial or employee manpower to process thorough background checks in a timely fashion. The opt-out provision sends the wrong message. The implicit message it sends is that the status quo is acceptable when it is clearly lacking. Under S. 1743, Congress should expect most States to exercise their opt-out rights under Section 4(e) and, therefore, effectively undo the good intentions of the U.S. Senate in passing the bill in the first place.

THE HOUSE BILL (H.R. 4022)

On March 24, 2004, New Jersey Representatives Robert E. Andrews (D) and Jim Saxton (R) introduced the Private Security Enhancement Act ("H.R. 4022"). Like S. 1743, H.R. 4022 proposes to grant providers of private security services access to the criminal history records available through the National Crime Information Center ("NCIC") in connection with their employees and prospective employees. H.R. 4022 represents, however, a more sensible and streamlined process for background check processing and will certainly produce a more effective system of security for our national assets and the life, health, and property of our citizens.

H.R. 4022 directs the Secretary of the Department of Homeland Security to, upon request by a covered private security firm, provide for an NCIC criminal history records check with respect to a covered employee or potential employee and provide a summary of the results of that check to the covered private security firm. The Justice Department is assigned responsibility for the actual processing of the background check. Finally, unlike S. 1743, there is no "opt-out" or any similar provision in H.R. 4022.

The benefits of H.R. 4022's streamlined processing system are obvious and significant in terms of uniformity, reliability and timeliness. Moreover, H.R. 4022 incorporates tough criminal safeguards against the improper use of any background check data, rationally limits the identifiable criminal offenses, and justifiably authorizes the imposition of processing costs on the private security officer industry.

In sum, H.R. 4022 effectively targets the public's interest in the enhancement of security services across the nation without interfering with the legitimate privacy rights of employees or adding new financial burdens on the strained federal budget.

S. 1743 represents a step, albeit small, in the right direction. H.R. 4022, by contrast, represents a meaningful step that enhances security in the real world.

RELATED ISSUES BEYOND THE PRIVATE SECURITY OFFICER INDUSTRY SECTOR

There are those that predict other industries (maybe several) will seek similar congressional authorizing legislation relative to background checks in the years ahead. Some of these rumored industries (*e.g.*, day care providers, burglar alarm companies, day camps) will have compelling cases to present. Others may not.

The Committee may decide that, over the long term, their resources are better focused on an inter-industry comprehensive solution to background check processing issues. In that regard, Allied Security can appreciate the sensibility of a congressionally mandated study and report by the Attorney General outlining a Departmental recommendation for all future nongovernmental requests for background checks.

With regard to the private security officer industry, however, the risks inherent in the present system are too consequential to wait any longer for background check reform. After all, as some have said, with regard to the private security officer industry, a streamlined and effective background check process is a "no brainer."

Other industries may also face pressing issues relating to background check reforms, but it is safe to say that none potentially and immediately impact the safety of the general public as significantly as our industry does. In the post-9/11 world, it is simply too important to delay any longer necessary reforms to the current system of background check processing in relation to private security officer companies.

Therefore, in addition to supporting the existing provisions of H.R. 4022, Allied Security strongly supports the inclusion of a provision requiring a date certain report from the Attorney General outlining the Department's recommendations for the future limited release of criminal history records for legitimate nongovernmental purposes.

CONCLUSION

Allied Security is honored to present this testimony to the Committee, and we strongly urge the Committee to report H.R. 4022 favorably as soon as possible. I welcome the further opportunity to address any questions Committee Members or your staff may raise. Thank you.

PREPARED STATEMENT OF CECIL HOGAN

Mr. Chairman, and Members of the Subcommittee. The National Burglar & Fire Alarm Association (NBFAA) appreciates the opportunity to participate in discussions on issues relating to private security employment authorization. NBFAA is a national trade association that represents more than 2,400 companies throughout the fifty states and four U.S. territories. Our members are engaged in the manufacture, sale, installation, service and/or monitoring of electronic life safety & security systems. Since 1948, NBFAA has been dedicated to raising the level of professionalism within the industry to the benefit of the consumers, public safety organizations and the electronic systems profession.

While NBFAA is encouraged by this legislation and the timely efforts of you and your colleagues, we believe this bill would be more effective and more strongly supported if its scope were increased. One of the main functions of NBFAA is to encourage the implementation of laws at both the state and federal levels with the primary purpose to promote professionalism of security systems companies, to maintain the operational reliability and proper use of physical and electronic security systems and to ensure a minimum level of training.

According to STAT Resources, Inc., Americans spent an estimated $18.7 billion on professionally installed electronic security products and services in 2001 (this figure includes monthly monitoring fees). This number was up from $17.5 billion in 2000 and $16.2 billion in 1999. While all agree that this number has significantly increased over the past three years, with the tragic events of September 11th, estimates on the amount of this increase are staggering.

In 2001 alone, an average of approximately 10,000 businesses nationwide were classified as "alarm installing entities" and spending on electronic security products and services is growing at an estimated 8.6 percent per year. Further, in the United States, crimes against commercial establishments have reached epidemic proportions. Each year, business losses due to crime exceed $100 billion.

While NBFAA and others have had success at establishing licensing of the electronic life safety and security industry at the state level, a good deal of work remains. Although 37 states have some sort of state license requirements for our industry, only 20 of those require background checks as part of that license. Just as this legislation illustrates the vital nature of the private security officers work in the new era of homeland security, so to is the vital work of the individuals and companies that provide the infrastructure for that work. However, at this time, many of our members do not have the ability to effectively screen their applicants and better ensure the safety of their clients. NBFAA believes strongly that this must change.

States that do not offer the ability to conduct a background check through state licensing for the electronic life safety, security and systems industry include Pennsylvania, Ohio, Nevada, Wisconsin and many more. Our members in these states install security and life safety systems to commercial properties (i.e. shopping malls, movie theaters, office buildings) as well as residential properties including apartment buildings. NBFAA members provide services to critical infrastructure across the country as well as schools and other institutional entities. We install security systems, fire systems, CCTV, access control, and much more.

Simply analyzing the potential dangers surrounding unqualified private security employee installing an access control system in one of these critical infrastructures alone is enough to understand our push for inclusion into this legislation. While ensuring the qualifications of the private security officer is essential, ensuring that the infrastructure under which he operates has been installed by qualified professionals is imperative.

In this new era of homeland security, the need for a partnership between the public and private security is important. Providing the resources and structure for this partnership is a role the federal government must play. While this legislation addresses the American public's need for the employment of qualified, well-trained private security personnel, it does not address that same need for the installers of the systems that protect their homes, their offices, their lives.

NBFAA appreciates the opportunity to submit this statement for the record.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF SECURITY COMPANIES

Mr. Chairman and Members of the Subcommittee,

The National Association of Security Companies (NASCO), a trade association, represents the major national and regional providers of contract security services in the United States. Our members collectively employ more than 400,000 private security officers nationwide.

NASCO companies' private security officers protect sites of all descriptions throughout America: shopping malls, office buildings, corporate campuses, hospitals, educational institutions, both conventional and nuclear power plants, utilities, financial institutions, water treatment and pumping stations, defense manufacturing facilities, chemical plants, communications centers, docks, warehouses, oil and gas production and transmission facilities, transportation hubs, government facilities, food manufacturing and processing plants, and bioresearch centers are among our members' clients.

Regardless of where disaster next strikes, whether as an act of terrorism, a weather-related emergency, or as an accident, it is a near-certainty that private security officers will be nearby. In many instances, private security officers are truly first responders, already on the premises and familiar with the property, its layout and structures, persons on the premises, and other significant details important to both protecting lives and assisting law enforcement.

Protecting lives and other valuable assets at such a vast number of sites across the nation places a high level of responsibility and a fundamental role in Homeland Security on our private security officers. NASCO's members want to hire well qualified candidates into these positions. To do so, they routinely conduct their own internal background investigations on job applicants. Maximizing the effectiveness of that process, however, requires either state or federal statutory authorization for our applicants to undergo a fingerprint-based check against the database maintained by the Federal Bureau of Investigation. That database offers the best assurance that an applicant in one state does not have a prior record of felony convictions in a state other than the one in which application is being made. S. 1743 would provide us that access, and we urge you to adopt it as an important step toward enhancing the security of our homeland.

At present, the private security industry is regulated in 40 states. The specific requirements for private security officers in those 40 states vary significantly, even as to the extent of background investigation required for employment. Only 31 states call for FBI criminal history records checks, and at least 7 of those limit the FBI checks to applicants for armed security positions (who constitute a distinct minority of all private security positions). Also among those 31 state laws are other state regulatory statutes that appear to permit the FBI checks, but do not require them, leaving yet another gap for an out-of-state convicted felon or an identity thief to gain security employment at a sensitive site. These gaps open the door for the very types of criminal conduct that our employees are typically assigned to prevent. Good security requires that they be closed.

As a federal bill, the impact of S. 1743 will be in the 10 states that lack private security regulation, the 9 regulated states that do not call for criminal records checks through the FBI, and the 7 states which routinely conduct FBI checks only for armed security applicants. It will also affect security applications in states which allow, but do not mandate, FBI checks. If S. 1743 is adopted, the decision to submit fingerprints for an FBI check could be made not only by the regulatory authority, but also at the request of an "authorized employer".

Mr. Chairman, NASCO has actively endorsed and supported prior bills intended to address these problems since the early 1990s. We offered testimony in support of H.R. 1534 in June 1993 when the House Subcommittee on Human Resources held two days of hearings, an earlier proposal sponsored by then-Congressman Matthew Martinez. Our support continued throughout the 1990s. We hoped that a solution was within reach when H.R. 2092, sponsored by then-Congressman Bob Barr, passed the House by a vote of 415–6 in 1996, and again when Congressman Barr's H.R. 103 passed the House by voice vote in mid-1997. Passage of S. 1743 by the Senate has again raised our hopes.

S. 1743 offers a more comprehensive proposal in response to our need for better background information access. It addresses not only the need for FBI checks in states that have already charged a specific agency with regulatory responsibility for private security without authorizing the federal background checks, but also offers a procedure by which background information can be obtained even in those states in which no regulatory body has yet been created.

Regardless of whether a state has a regulatory agency or not, *no additional expense will be imposed on the government* because the cost of processing the fingerprint records will be covered by user fees. Should a state object to participating in this Homeland Security-enhancing service for which the industry will absorb the cost, that state can exercise the "opt-out" option provided in the bill.

Mr. Chairman and Members of the Subcommittee, NASCO thanks you for your attention in this security-critical matter. Please help us to provide better-screened security officers by passing S. 1743 now.

LETTER FROM WARREN B. RUDMAN

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1615 L STREET, NW WASHINGTON, DC 20036-5694
TELEPHONE (202) 223-7300 FACSIMILE (202) 223-7420

WARREN B. RUDMAN
OF COUNSEL
TELEPHONE (202) 223-7320

1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-6064
TELEPHONE (212) 373-3000
FACSIMILE (212) 757-3990

62, RUE DU FAUBOURG SAINT-HONORÉ
75008 PARIS, FRANCE
TELEPHONE (33 1) 53 43 14 14
FACSIMILE (33 1) 53 43 00 23

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3597-8101
FACSIMILE (81-3) 3597-8120

2918 CHINA WORLD TOWER II
NO. 1 JIANGUOMENWAI DAJIE
BEIJING, 100004
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 6505-6822
FACSIMILE (86-10) 6505-6830

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2536-9933
FACSIMILE (852) 2536-9622

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1600
FACSIMILE (44 20) 7367 1650

December 11, 2003

The Honorable Jim Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-62616

RE: S. 1743

Dear Chairman Sensenbrenner and Chairman Coble:

I am writing to encourage your prompt consideration of S. 1743, Senate-passed legislation that would allow private security companies to ensure that their employees do not have a disqualifying FBI criminal history record. This bill creates exactly the sort of public-private partnership that was recommended by the U.S. Commission on National Security/21st Century and I encourage its prompt enactment. Paul, Weiss represents Guardsmark LLC, a private security company, in corporate matters although I am not involved in any government relations activities for Guardsmark LLC. That work is done by Carl Hampe, Esq. of Baker & McKenzie.

Along with former Senator Gary Hart, I co-chaired the commission that examined how U.S. homeland security was vulnerable to attack. One of our principal recommendations was that Congress should encourage the sharing of threat, vulnerability and incident data between the public and private sectors, particularly as applied to "threats to critical infrastructures."[1] "Critical infrastructures" were defined in resident Decision Directive 63 as telecommunications, energy, banking and finance,

[1] U.S. Commission on National Security/21st Century. Phase III Report, February 15, 2001, at 18 and 27 (fn. 21).

transportation, water systems, and public and private emergency services. These critical infrastructures have been viewed as vital to U.S. national security since the end of the Cold War, particularly given that "most of these systems are interrelated and a failure in one would likely have impacts on other systems."[2]

S. 1743 recognizes that "many of these systems are owned and managed by the private sector, and thus it is beyond the capacity of the federal government alone to protect them. Should one or more critical infrastructures fail, the effects could impede traditional national security functions as well as economic prosperity, thus affecting both national military and economic power."[3] In fact, most of these critical infrastructure components are protected primarily by private guards employed by companies providing security services. The legislation's enabling of a review of the criminal history records of prospective private-security officers is exactly the sort of public-private cooperation that the Commission viewed as essential to promoting U.S. homeland security.

It is my understanding that the House Judiciary Committee is considering the deferral of action on the Senate-passed bill until it undertakes a more thorough exploration of employer requests in general for background checks based on the FBI's criminal justice information database. I would encourage you not to defer action on S. 1743, because of the urgent nature of the Senate bill. This legislation is the only legislation that targets the entities -- private security guard companies -- that protect the majority of the critical infrastructure points in the United States. The Commission identified these points as particularly vulnerable to terrorist attack and uniquely capable of causing mass disruption to the U.S. economy and national security. S. 1743 significantly enhances the first line of defense – private security guards – against an attack on critical infrastructures, and therefore provides Congress with an excellent opportunity to improve homeland security.

I can understand the concept of regularizing the mechanism by which employers from any industry may request access to the FBI CJIS database for employment purposes. Based on my years of service on the Commission, however, I believe S. 1743 deserves expedited treatment based on the critical gap that it fills in our nation's homeland security. I therefore respectfully encourage you and the committee to act promptly on S. 1743.

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[2] U.S. Commission on National Security/21st Century. National Security Study Group Report, April 15, 2001, at 45.
[3] Id.

While our firm does represent Guardsmark LLC, a private-security company that strongly supports S. 1743, I am writing on this matter because of my experience with the Commission and my belief that this legislation promotes important national interests. I thank you for your consideration of my thoughts on this topic.

Very truly yours,

Warren B. Rudman

Cc: The Honorable John Conyers, Committee on the Judiciary
The Honorable Bobby Scott, Committee on the Judiciary

The Honorable John Boehner, Committee on Education and the Workforce
The Honorable George Miller, Committee on Education and the Workforce

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